

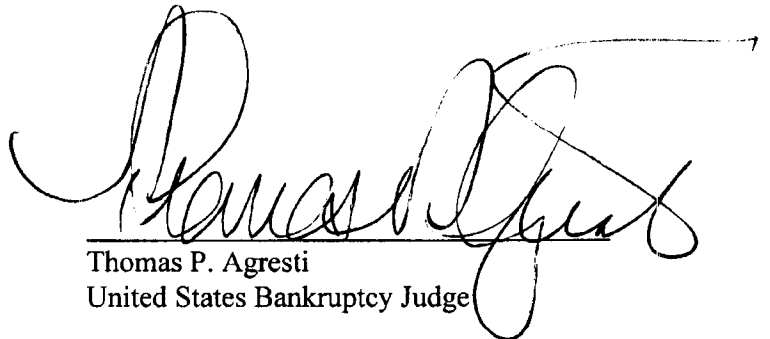
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:

COUNTRYWIDE HOME LOANS, INC., : Misc. No. 07-00204 TPA  
f/k/a COUNTRYWIDE FUNDING CORP., : Chapter 13  
:

**CERTIFICATION OF TRANSCRIPT**

*AND NOW*, this *10th* day of *March, 2008*, it is hereby ***CERTIFIED*** that the accompanying transcript of the proceeding held on *February 28, 2008* in regards to the Argument on *Objections to Notices of Examination* Document No. 12 and *Motion to Quash* Document No. 13 in the above-captioned matter is the official transcript of record. This Certification is preliminary, and the transcript is subject to appropriate correction following a complete review of its content by the Court.



Thomas P. Agresti  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF PENNSYLVANIA  
PITTSBURGH DIVISION

IN RE:	)	CASE NO: 07-204-TPA
	)	
	)	Pittsburgh, Pennsylvania
COUNTRYWIDE HOME LOANS, INC,	)	
	)	Thursday, February 28, 2008
	)	(8:45 a.m. to 11:00 a.m.)
Debtor.	)	
	)	

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ARGUMENT ON OBJECTIONS TO NOTICES OF EXAMINATION  
AND MOTION TO QUASH

BEFORE THE HONORABLE THOMAS P. AGRESTI,  
UNITED STATES BANKRUPTCY JUDGE

Appearances:	See next page
Court Recorder:	Irene Wenzel
Video Operator:	Jeff Furis
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Pittsburgh, PA; Thursday, February 28, 2008; 8:55 a.m.

(Call to Order)

**THE COURT:** Good morning; please be seated.

All right. This is the time set for the Argument on Objections to Notices of Examination and the Motion to Quash filed by Countrywide at Document Numbers 12 and 13 in Miscellaneous Matter Number 07-204. At this time I'd like all of the attorneys in the courtroom representing the various parties to enter your appearances.

**MR. CONNOP:** Good morning, your Honor; Tom Connop of Locke Lord Bissell and Liddell; Dallas, Texas, on behalf of Countrywide Home Loans, Inc. Appearing with me is Dorothy Davis of Eckert Seamans. Also at counsel table is Charles Townsend, in-house counsel with Countrywide Home Loans.

**THE COURT:** Thank you.

**MS. DAVIS:** Good morning, your Honor.

**THE COURT:** Good morning.

**MR. DePASQUALE:** Good morning, your Honor; Leonard DePasquale for the United States Trustee and accompanying me is Norma Hildenbrand for the United States Trustee.

**THE COURT:** Thank you, Counsel.

Before we get started on the argument itself, I'd like to put on the record the fact that we met via telephonic conference -- I'd like to say Monday, maybe it was Tuesday; I can't recall but in any event we had all parties represented to

1 work out, informally, some issues related to the exhibit books  
2 so that we could begin promptly at 9:00 and spend the next two  
3 hours, if we need that long, hard at work at the arguments on  
4 the various pleadings that are pending. Since that time I  
5 received a Motion to Accept New Exhibit 49 which appears to  
6 have met the substance of the original Countrywide objection  
7 during the telephone conversation, but I'm not going to presume  
8 anything.

9 Mr. Connop, do you have any objection to the motion,  
10 the motion being granted?

11 **MR. CONNOP:** Your Honor, the only observation  
12 Countrywide would make is that there is an additional page that  
13 was -- according to the United States Trustee, not part of the  
14 original facsimile that was transmitted by Mr. Miscavage's  
15 office, if I understand the Trustee correctly. That would be  
16 an e-mail from a Christopher Ammon to Mr. Miscavage. Your  
17 Honor, nonetheless, Countrywide's not going to object to  
18 Exhibit 49. If the U.S. Trustee wishes to use it and argue,  
19 that's fine.

20 **THE COURT:** Thank you. All right. Then we will  
21 grant that request to admit it and sign that order.

22 **(Exhibit 49 admitted)**

23 Also, we had some objections ... I'm not sure if  
24 we've resolved. Let me go through the specific objections of  
25 Countrywide to the U.S. Trustee's exhibits.

1           The first objection that's filed -- I don't have the  
2 document number -- Objection A on that pleading which is dated  
3 February 21<sup>st</sup>, 2008 appears to be the issue of Exhibit 49;  
4 that's been resolved. Is that a fair statement, Mr. Connop?

5           **MR. CONNOP:** Yes, it is, your Honor.

6           **THE COURT:** All right. Exhibits from the Roberts'  
7 case should not be admitted. That too, I understand, has been  
8 resolved because Roberts is to be withdrawn and we agreed that  
9 we would sustain that during the telephone conversation.

10           Mr. DePasquale, is that a fair statement?

11           **MR. DePASQUALE:** Yes, your Honor.

12           **THE COURT:** All right, then, Item C: "Additional  
13 exhibits from proceedings in other jurisdictions should not be  
14 admitted." How has that been resolved, if at all?

15           Mr. Connop, has that been resolved -- all right, let  
16 me go to Mr. De -- Mr. Connop, it's your objection; I'll let  
17 you address that.

18           Mr. Connop?

19           **MR. CONNOP:** Thank you, your Honor.

20           Your Honor, in consideration of the issues that are  
21 before the court today; specifically directed to the United  
22 States Trustee's powers, we are not going to object to the  
23 introduction of the additional exhibits from the two Florida  
24 proceedings. We'll be happy to argue to the extent those are  
25 relevant -- the impact of those orders and other related

1 matters.

2           **THE COURT:** All right, very good. So you withdraw  
3 that Objection C, then? Is that a fair statement? You're  
4 going to continue being able to reference and use your Exhibits  
5 S, T and U and you will withdraw your exhibit --

6           **MR. CONNOP:** That --

7           **THE COURT:** -- your objection? Go ahead.

8           **MR. CONNOP:** That is correct, your Honor.

9           **THE COURT:** All right. Very good. So all the  
10 objections to the exhibits have now been either -- well, all  
11 resolved. Is that a fair statement?

12           Mr. Connop?

13           **MR. CONNOP:** From Countrywide's standpoint, that's  
14 correct, your Honor.

15           **THE COURT:** How about the U.S. Trustee's objections?  
16 Mr. DePasquale, you had some --

17           **MR. DePASQUALE:** I believe they were all resolved,  
18 your Honor.

19           **THE COURT:** In your objections you've also indicated  
20 a request to withdraw all exhibits pertaining to the Ramsey  
21 case, Number 01-31062, the Ennis case, Case Number 05-1195 and  
22 the Roberts case, Number 05-25324; and all the exhibits in  
23 regards to those three cases, specifically Exhibits 12 through  
24 29, Exhibits 102 through 121 and Exhibits 156 through 172,  
25 respectively.

1 Is that a fair statement, Mr. DePasquale?

2 **MR. DePASQUALE:** Yes, your Honor.

3 **THE COURT:** I will grant that request.

4 **(Request granted)**

5 Now, apparently Countrywide, you've objected to S, T  
6 and U but alternatively you indicated in paragraph 4 of your  
7 objection that, in the event S, T and U are permitted, you'd  
8 like to provide documentation regarding the Del Castillo and  
9 Chadwick cases from Florida -- and it sounds like Countrywide  
10 has no objection, Mr. DePasquale. Would you like to submit  
11 those exhibits?

12 **MR. DePASQUALE:** Yes, your Honor.

13 **THE COURT:** And then withdraw your objection to S, T  
14 and U?

15 **MR. DePASQUALE:** That is correct, your Honor.

16 **THE COURT:** Okay. We will rule accordingly.

17 **(Objection to S, T and U ruled withdrawn)**

18 All right. Based on that, all of the exhibits,  
19 subject to the rulings we just made, will be offered and  
20 admitted for purposes of this proceeding, argument and then  
21 ultimate decision by the court.

22 With that, Mr. Connop, we'll let you begin. Again,  
23 it's your pleasure if you'd like to stand at the podium or  
24 remain seated. Whatever you'd like to do or you feel more  
25 comfortable doing, it's up to you, but go ahead. Tell me why I



1 should grant your request to have the Objections to the Notices  
2 of 2004 Exam granted and the Motion to Quash Subpoenas granted.

3 **MR. CONNOP:** Thank you, your Honor.

4 A brief overview of the seven remaining cases that  
5 are at issue in this consolidated miscellaneous proceeding,  
6 those cases are the Topper case -- which apparently from the  
7 U.S. Trustee's perspective involves the denial of a motion for  
8 relief from stay without prejudice that had been filed by  
9 Countrywide on August 20<sup>th</sup> of 2006. Mr. Topper, the debtor,  
10 was discharged approximately one year later on August 24<sup>th</sup> of  
11 2007.

12 The next case is the *Carleski* case which, according  
13 to the U.S. Trustee, the issue that it believes exists consists  
14 of three motions to dismiss that were filed by Countrywide  
15 because the Carleskis were serial filers. Two of those motions  
16 were dismissed for failure to comply with a Local Rule of this  
17 District. The third was withdrawn. These motions to dismiss  
18 were all filed three years ago.

19 *Benvenuto* case, your Honor, is a third. That case,  
20 the issue apparently involves a motion to determine if mortgage  
21 is current, filed by the debtor April 17<sup>th</sup> of 2007. That  
22 motion was resolved by a consent order May 24<sup>th</sup> of 2007, and  
23 the debtor was discharged June 8<sup>th</sup> of 2007.

24 The *Stemple* case apparently involves, from the U.S.  
25 Trustee's perspective, a claim objection that was filed by the

1 debtor in November of 2003. Countrywide filed a response in an  
2 amended claim, and the debtors withdrew their objection to that  
3 claim. Subsequently, there was a notice of change in monthly  
4 payment submitted to the debtor, to which the debtor objected.  
5 The Court denied Countrywide's request to increase the debtor's  
6 payment.

7           The fifth case, the *Olbetor* case, involved a motion  
8 for relief from stay filed from Countrywide. Although the U.S.  
9 Trustee has advised the Court that this involves a failure to  
10 remit payment of pre-petition arrears, in fact this case  
11 involved and the motion for relief from stay dealt with the  
12 failure to receive post-petition payments from the Chapter 13  
13 Trustee.

14           The issue, according to the Court's docket in that  
15 matter, involved the Chapter 13 Trustee's position that  
16 Countrywide had not filed a proof of claim and that she was  
17 unable to determine the address to remit the payments.  
18 Countrywide in fact filed a proof of claim on July 2<sup>nd</sup> of 2005,  
19 and the Chapter 13 Trustee began remitting payments in August  
20 of 2005.

21           The *Bach* case involves a motion for relief from stay.  
22 The Bachs had their case converted to a Chapter 7 in March of  
23 2006, and they subsequently reaffirmed their mortgage debt.  
24 They missed post-petition, post-conversion payments, and  
25 Countrywide filed a motion for relief from stay. That motion

1 for relief from stay was denied. The grounds for the denial  
2 were not stated by the Court in its order. The Bachs were  
3 discharged June 15<sup>th</sup> of 2006.

4 The seventh case, and the single case with a pending  
5 contested matter, is the *Hill* case with which the Court is  
6 familiar; a motion to enforce discharge. This is a contested  
7 matter under Rule 9014. Following the Court's rulings over the  
8 past month and a half, the parties are now engaging in  
9 discovery, not under Rule 2004 but rather under Federal Rule of  
10 Civil Procedure 30 as incorporated in Rule 9014.

11 Of these seven cases, your Honor, three were  
12 discharged and closed; *Topper*, *Benvenuto*, and *Bach*. *Benvenuto*  
13 involved a consent order negotiated by debtor's counsel.

14 Three of these cases involve contested motions,  
15 contested motions that were adjudicated by the Court, responded  
16 to by the debtor; *Stemple*, *Topper*, and *Olbetor*.

17 Two of these matters involve nothing having to do  
18 with the specific pre-petition debtor/creditor relationship;  
19 *Carleski*, involving serial filers; and *Olbetor*, involving post-  
20 petition Trustee plan payments.

21 The notices of Rule 2004 examination filed by the  
22 United States Trustee have now been consolidated into a single  
23 notice and subpoena. These notices call for wide-ranging  
24 document requests dealing with the protocols, policies, and  
25 procedures of Countrywide in a variety of matters; the

1 protocols and procedures for receiving, processing, handling  
2 accounting, and applying for payments; for drafting, verifying,  
3 and filing proofs of claim; for the collection of debts,  
4 including any communications that Countrywide had with debtors  
5 -- and that's policies and procedures with any debtor, not  
6 these specific debtors; policies and procedures regarding  
7 filing of motions for relief from stay.

8           Finally, there are some specific documents that were  
9 requested; the note and mortgage for each debtor and the  
10 payment history for each debtor.

11           There are four other categories of documents dealing  
12 with the preparation and support for proofs of claim apparently  
13 filed in each of the seven remaining cases; all documents  
14 supporting the amounts claimed, apparently also in each of the  
15 seven cases; all internal and external communications regarding  
16 the debtors; and all documents regarding Countrywide's attempts  
17 to collect on debts owed by the debtors.

18           These categories of documents requested are not tied  
19 to the specific issues apparently identified by the United  
20 States Trustee. They do not ask, for example, why Countrywide  
21 filed three serial motions to dismiss the *Olbetor* case. They  
22 do not ask the basis for the allegations contained in the  
23 debtor's motion to deem mortgage current. Rather, they seek  
24 documents that pertain to overall policies and procedures of  
25 Countrywide whether or not relevant to the issues that the U.S.

1 Trustee has identified.

2           Moreover, there are no open issues in any of these  
3 cases other than the *Hill* case, and that matter is being  
4 addressed by the Court and by the parties through discovery  
5 conducted not only by the U.S. Trustee, but by the Chapter 13  
6 Trustee and the debtor herself. That discovery is in process.  
7 The parties, including the debtor, are very actively  
8 participating in prosecuting that motion. Indeed, your Honor,  
9 that is the adversary process within the bankruptcy context  
10 that is supposed to work.

11           And indeed, I think it is correct to say, your Honor,  
12 that in virtually all cases, indeed the cases that have been  
13 cited as examples by the U.S. Trustee in which they seek to  
14 examine, the debtors have actively participated in those cases.  
15 This is not a matter where the debtors have ignored what they  
16 perceive to be deficiencies or inaccuracies in pleadings by  
17 Countrywide.

18           The topics that the U.S. Trustee wishes to examine  
19 are similarly broad-ranging. They deal with the application of  
20 payments in all Chapter 7 and Chapter 13 bankruptcies  
21 administered by Countrywide; Countrywide's policies and  
22 procedures for filing proofs of claim; for filings motions for  
23 relief from stay; for collection on accounts; its treatment of  
24 mortgage arrearages; calculation of escrow accounts and  
25 disbursements from escrow accounts; the media for storage of

1 customer records, its handbooks and training materials; and  
2 then finally, the examination topic of questions regarding the  
3 documents that had been requested.

4           On November 20<sup>th</sup>, the Court issued an order directing  
5 the parties to brief 12 issues. Countrywide attempted to  
6 collate those issues into three general topics in order to, we  
7 believe, focus the argument. The first is the source and  
8 extent of the U.S. Trustee's power to conduct an investigation  
9 of a party in interest. We then turned to the limits on the  
10 breadth of the discovery proposed by the U.S. Trustee. And  
11 finally whether, as the Court called them, 'the context cases',  
12 pointed to a systemic abuse of the bankruptcy system.

13           The overriding question, your Honor, that Countrywide  
14 submits must be addressed is the first. Does the U.S. Trustee  
15 have the power to conduct an investigation, which is what the  
16 U.S. Trustee now terms its 2004 process, to conduct an  
17 investigation into the policies, procedures, systems, and  
18 practices of a non-debtor party in interest -- in this case, a  
19 creditor -- in the absence of any outstanding issue in a case?

20           The answer to that question, your Honor, based upon  
21 the statutory authority granted to the U.S. Trustee,  
22 particularly when read in context with the Bankruptcy Code and  
23 other federal statutes governing agencies, is a resounding  
24 'No'.

25           Nowhere in the numerous statutory references that the

1 U.S. Trustee has cited and that have also been cited by  
2 Countrywide, is there a single reference to or grant of power  
3 to the U.S. Trustee to conduct the investigation that the U.S.  
4 Trustee wishes to launch in these cases. The organic statute  
5 governing the U.S. Trustee's duties and powers is Section  
6 586(a)(3) of Title 28.

7 Under that statute, the U.S. Trustee is empowered to  
8 review applications for compensation and file comments; to  
9 monitor Chapter 11 plans and disclosure statements and file  
10 comments; to monitor plans filed under Chapters 12 and 13 and  
11 file comments; to take actions to ensure that reports,  
12 schedules, and fees are properly and timely filed; to monitor  
13 creditors committees; to notify the U.S. Attorney of matters  
14 that may involve crimes; to monitor the progress of cases; to  
15 perform certain additional duties in the context of small  
16 business cases; and to monitor employment applications.

17 Now, as the U.S. Trustee points out, there are  
18 additional specific directions in the Bankruptcy Code as to  
19 matters that the U.S. Trustee can become involved in. We  
20 counted 27 separate Code sections that dealt with those powers  
21 and duties.

22 Without enumerating each of those sections, the U.S.  
23 Trustee is, for example, empowered to review, comment on  
24 applications for employment and fee applications for  
25 professionals hired by the estate. They are empowered to take

1 actions against bankruptcy petition preparers, appoint interim  
2 Trustees, preside at creditors meetings and examine the debtor;  
3 to consult with creditors committees and appoint creditors  
4 committees; and to request the appointment of a Trustee or  
5 examiner in Chapter 11 cases; and request the removal of  
6 Trustees.

7 Now, this is just a small delineation of the number  
8 of specific duties that the U.S. Trustee has, as well as its  
9 powers. However, additionally, specifically in reference to  
10 Chapter 13 proceedings, the U.S. Trustee has the power to  
11 appoint the standing Chapter 13 Trustee and to request  
12 conversion or dismissal of a Chapter 13 case.

13 Conspicuously and noticeably absent from all of those  
14 statutory grants of powers and authorities is any authority  
15 granted to the United States Trustee to investigate the affairs  
16 of a creditor. Indeed, the examination of parties in interest  
17 by the United States Trustee is mentioned in only two sections  
18 of the Code; Section 343, which empowers the United States  
19 Trustee to convene and preside over the examination of the  
20 debtor; and its power to investigate debtors under Section  
21 27(c) in connection with the debtor's right to a discharge.

22 The United States Trustee however, argues that its  
23 broad source of power is created by Section 307 of the  
24 Bankruptcy Code. It argues that that broad grant of power is  
25 effectively unlimited, noting that Congress, in its view, knows



1 how to limit powers of the United States Trustee or other  
2 governmental agencies when it chooses.

3 Countrywide would also posit, your Honor, that  
4 Congress, when it enacted the Bankruptcy Code, knew also how to  
5 authorize the conduct of investigations. There are four  
6 specific Code sections which deal with investigations, in  
7 addition to the two that I just cited, that address the United  
8 States Trustee's powers.

9 Chapter 7 Trustees are empowered to conduct  
10 investigations. I would cite the Court to Section 704(a)(4),  
11 which permits the Chapter 7 Trustee to investigate the  
12 financial affairs of the debtor.

13 Creditors committees appointed under Section 1103  
14 likewise are authorized to conduct investigations. That  
15 statute states that a committee appointed under Section 1102 of  
16 the Title may investigate the acts, conduct, assets,  
17 liabilities, and financial condition of the debtor, the  
18 operation of the debtor's business, and the desirability of the  
19 continuance of such business, and any other matter relevant to  
20 the case or to the formulation of a plan.

21 Chapter 11 examiners are likewise empowered to  
22 conduct investigations under Section 1104(c), which states if  
23 the Court does not order the appointment of a Trustee under  
24 this Section, then at any time before the confirmation of a  
25 plan, on request of a party in interest and after notice and a

1 hearing, the Court shall order the appointment of an examiner  
2 to conduct such an investigation of the debtor -- of the debtor  
3 -- as is appropriate, including an investigation of any  
4 allegations of fraud, dishonesty, incompetence, misconduct,  
5 mismanagement, or irregularity in the management of the debtor  
6 of or by current or former management of the debtor. And even  
7 then, the examiner may conduct that investigation only if it is  
8 in the interest of creditors, equity security holders, and  
9 other interests of the estate, and, if the debtor's debts  
10 exceed the sum of \$5 million dollars.

11 Finally, Trustees under Chapter 11 are empowered to  
12 conduct examinations, investigations, under 1106(a)(3). That  
13 Code section permits a Chapter 11 Trustee, except to the extent  
14 the Court orders otherwise, to investigate the acts, conduct,  
15 assets, liabilities, and financial condition of the debtor, the  
16 operation of the debtor's business, and the desirability of the  
17 continuance of such business, and any other matter relevant to  
18 the case or to the formulation of a plan.

19 Congress dealt with investigations. It dealt with  
20 those investigations in four Code section; 704, 727, 343, 1103,  
21 1104, and 1106. Notably, only two of those Code sections deal  
22 with the powers of the United States Trustee.

23 Nowhere in Title 28, Section 586 or Title 11 is the  
24 United States Trustee empowered to conduct investigations of  
25 creditors or other parties in interest under Title 11.

1           Your Honor, in addition to the limitations, or  
2           absence I should say, of statutory authority to the United  
3           States Trustee, Congress likewise knew how to empower other  
4           federal agencies with the ability to conduct investigations.  
5           The United States Trustee, for example, at one part of its  
6           brief, notes that Congress' limitation of Title 11 powers  
7           extends to the Securities and Exchange Commission, in Section  
8           1109(a).

9           We examined the United States Code and the allocation  
10          of powers to investigate and conduct investigations granted by  
11          Congress in specific sections of federal law. The Securities  
12          and Exchange Commission, for example, is authorized to have the  
13          power to conduct investigations, investigations specifically,  
14          summon witnesses, and order production of documents; 15 U.S.C.,  
15          Section 77(s) and 78(u).

16          The Commodities Futures Trading Commission is  
17          empowered to conduct investigations, demand information, issue  
18          subpoenas, demand production of documents, administer oaths,  
19          and appoint administrative law judges. That authorization is  
20          found at 7 U.S.C., Sections 2 and 15.

21          The Consumer Products Safety Commission is authorized  
22          to investigate injury data and issue rules and regulations; to  
23          inspect, upon written notice, any factory, manufacturing  
24          center, or warehouse. That is found at 15 U.S.C., Section  
25          1065.

1 OSHA is empowered to inspect work places, question  
2 employees and employers, review records of inspected  
3 businesses; 28 U.S.C., Section 657.

4 The Occupation Safety and Review Commission is  
5 empowered to investigate safety violations by summoning  
6 witnesses and requiring the production of documents.

7 The EPA can issue subpoenas for the production of  
8 witnesses or documents, inspect records of polluting  
9 facilities, conduct criminal investigations, inspect  
10 facilities, documents, and records to ensure compliance with  
11 regulations.

12 The NLRB is empowered to investigate unfair labor  
13 practices.

14 The National Transportation Safety Board is empowered  
15 by Congress to conduct hearings and subpoena witnesses.

16 The list goes on, your Honor. The Federal Election  
17 Commission; the Department of the Interior; Department of  
18 Health and Human Services; the Equal Employment Opportunity  
19 Commission; the Department of Transportation; the Surface  
20 Transportation Board; the Federal Aviation Administration; the  
21 Transportation Security Administration; the SBA; and the  
22 Federal Reserve. Each of those federal agencies, your Honor,  
23 has been specifically empowered by statute, by Congress, to  
24 conduct investigations, issue subpoenas, examine witnesses, and  
25 compel the production of documents.

1           As the Trustee contends that Congress that knew how  
2 to limit its powers, so too did Congress understand how to  
3 grant powers, and the power that it did not grant to the United  
4 States Trustee is the power to examine the internal business  
5 affairs and policies of a creditor or any other party in  
6 interest.

7           We are focused in this proceeding, your Honor, on  
8 Countrywide, but the effect of what the U.S. Trustee seeks to  
9 accomplish here is much further ranging than Countrywide.  
10 Countrywide does appear in many Chapter 13 cases before this  
11 Court and before other Courts. However, the authority and the  
12 power that the U.S. Trustee wishes to exercise in this case  
13 will extend far beyond Countrywide, but can extend, according  
14 to the U.S. Trustee's hypothesis, to any party in interest  
15 regardless of their particular interest in the Chapter 13 case  
16 or in a case under Chapter 7, Chapter 11, Chapter 12, or  
17 Chapter 9.

18           Unquestionably, the Office of the United States  
19 Trustee is an agency that is located under the Executive  
20 Department of the United States Government. A well-reasoned  
21 examination of the United States Trustee's status as an agency  
22 is set forth in *In Re: Vance* cited in our pleading. It is 120  
23 Bankruptcy Reporter, 181.

24           It is well-settled, your Honor, that an agency can  
25 only act within the framework specifically granted to it by

1 Congress. The United States Supreme Court spoke to that issue  
2 in *Ragsdale versus Wolverine Worldwide*, a case involving the  
3 Family Medical Leave Act, where the Department of Labor argued  
4 that a regulation extended to override certain employer-granted  
5 medical leave provisions.

6 The Supreme Court stated regardless of how serious  
7 the problem an administrative agency seeks to address, however,  
8 it may not exercise its authority in a manner that is  
9 inconsistent with the administrative structure that Congress  
10 enacted into law.

11 The Court of Appeals for the District of Columbia  
12 Circuit has also written on this topic, your Honor, in a case  
13 dealing with the Environmental Protection Agency and, as noted,  
14 the Environmental Protection Agency is at least an agency that  
15 has been specifically authorized by Congress to conduct  
16 investigations. That case involved a dispute over the EPA's  
17 authority to enact Clean Air Act permit programs in lands where  
18 a designation as Indian country was in question.

19 Much as the United States Trustee in this case has  
20 cited as the basis for its power legislative history and  
21 submits a self-enacted mission statement granting it the  
22 authority to act as watchdog, the EPA in *Michigan versus EPA*  
23 cited as its basis for authority its own statement in a  
24 regulation it enacted that empowered it to take that action.

25 The language of the District of Columbia Court of

1 Appeals is very significant, and it dates back to the founding.  
2 It is elementary that our federal government is one of limited  
3 and enumerated powers. The powers to the legislature are  
4 defined and limited, and that those limits may not be mistaken  
5 or forgotten the Constitution as written, citing *Marbury versus*  
6 *Madison*.

7 This principle applies with equal force to the so-  
8 called modern administrative state. EPA is a federal agency, a  
9 creature of statute. It has no Constitutional or common law  
10 existence or authority but only those authorities conferred  
11 upon it by Congress. It is axiomatic that an administrative  
12 agency's power to promulgate legislative regulations is limited  
13 to the authority delegated by Congress, citing *Bowlen versus*  
14 *Georgetown University Hospital*, and going on: Thus, if there is  
15 no statute conferring authority, a federal agency has none.

16 The Court further stated that mere ambiguity in a  
17 statute is not evidence of the Congressional delegation of  
18 authority, and courts are not to presume a delegation of power  
19 in the absence of an express withholding of such power.  
20 Essentially, that is what the United States Trustee asks this  
21 Court to do in its interpretation of 11 U.S.C., Section 307.

22 **THE COURT:** Mr. Connop.

23 **MR. CONNOP:** Yes, your Honor.

24 **THE COURT:** Could you give me the cite to that  
25 *Michigan versus EPA*. I don't think that's in your brief, and

1 you didn't mention it in your presentation.

2           **MR. CONNOP:** Your Honor, I do think it is in our  
3 brief, your Honor.

4           **THE COURT:** Is it?

5           **MR. CONNOP:** Yes.

6           **THE COURT:** All right, if it is, then we'll find it.  
7 We'll find it. I didn't --

8           **MR. CONNOP:** But I can give it to your Honor. It's  
9 268 F.3d 1075.

10           **THE COURT:** Date? Year?

11           **MR. CONNOP:** October 30, 2001, your Honor.

12           **THE COURT:** That's the one. Thank you, okay.

13           **MR. CONNOP:** I have just mentioned Section 307 of the  
14 Code, your Honor. The Trustee believes that that Section of  
15 the Code grants it, effectively, as I read its brief, unlimited  
16 power, except it is restricted from filing a plan of  
17 reorganization. That statute states 'The United States Trustee  
18 may raise and may appear and be heard on any issue in any case  
19 or proceeding under this Title' -- And that's important  
20 language which I will quote to your Honor again in a moment --  
21 'but may not file a plan pursuant to 1121(c) of this Title.'

22           That section, according to the United States Trustee,  
23 is the alpha and omega of its powers; beginning, the end. It  
24 can do anything. 'It can appear and be heard on any issue in  
25 any case or proceeding under this Title.' Countrywide submits



1 that that is not an appropriate interpretation of that statute  
2 to use as a basis to conduct creditor investigations.

3           Indeed, if the United States Trustee's interpretation  
4 is correct, there is no need for the specific grants of power  
5 and duties that are indicated by Congress in the 27 separate  
6 Code provisions that are cited in both the U.S. Trustee's and  
7 Countrywide's briefs. The U.S. Trustee would have no need to  
8 resort to the statutory authority to monitor committees; it  
9 could do that anyway. It could clearly appoint committees;  
10 it's entitled to raise and be heard on any issue; monitor and  
11 comment on fee applications; move for dismissal or anything  
12 else that arises in the context of a case filed under Title 11.

13           By analogy, I mentioned earlier in my argument, the  
14 United States Trustee points to Section 1109(a) in which  
15 similar authority is granted to the Securities and Exchange  
16 Commission in Chapter 11. But the United States Trustee  
17 ignores the grant of Section 1109(b), and that's a very  
18 important provision to distinguish between the powers that the  
19 U.S. Trustee purports to assume in this case and the authority  
20 granted to any party in interest in a Chapter 11 case.

21           1109(b) provides that a party in interest, including  
22 the debtor, the Trustee, a creditors committee, an equity  
23 security holder's committee, a creditor -- a creditor -- an  
24 equity security holder, or any indenture Trustee may raise and  
25 may appear and be heard on any issue in a case under this

1 chapter. That is identical language to the language of Section  
2 307 that the United States Trustee cites as the source of its  
3 organic authority to conduct the 2004 investigations and  
4 subpoenas in this matter.

5           Accepting the U.S. Trustee's postulate, were this a  
6 Chapter 11 case, any creditor, any party in interest, no matter  
7 what the stake of that creditor in the case, could examine any  
8 other creditor, without the context of an adversary proceeding  
9 or a contested matter, to investigate that creditor's actions  
10 not only in connection with that case but, indeed, in  
11 connection with that creditor's involvement in any other Title  
12 11 matter or Chapter 11 matter.

13           The Court needs to reconcile the broad scope of the  
14 U.S. Trustee's assumed power with the scope of any creditor or  
15 party in interest's power which would presumably be co-  
16 extensive with that granted to the United States Trustee in a  
17 Chapter 11. Your Honor, we'd submit that looking at those two  
18 statutes as well as 1109(a), renders the U.S. Trustee's  
19 interpretation of Section 307 incorrect.

20           Further, taking the U.S. Trustee's position to its  
21 logical conclusion, granted the powers it assumes under Section  
22 307 to raise, appear, and be heard on any issue in a case under  
23 Title 11, the U.S. Trustee could file adversary proceedings on  
24 a debtor's behalf, could sue the debtor's management, could  
25 move for relief from the automatic stay, could move for

1 authorization for the debtor to use, sell, or lease property of  
2 the estate. It could on its own behalf file transfer avoidance  
3 actions, powers that are clearly understood to extend to the  
4 debtor and not to the office of the United States Trustee.

5           Simply put, your Honor, in its brief the United  
6 States Trustee admits to no power -- no limitation whatsoever  
7 on its powers under Title 11. This is a Constitutional  
8 government. The United States Trustee's authority is generated  
9 by federal statute. As we noted above, if Congress intended  
10 the United States Trustee to have the power to investigate non-  
11 debtor's conduct, it would have granted that power. It did  
12 not. Congress knew how to grant the power to investigate to  
13 other federal agencies. It did. The same power is not granted  
14 to the office of the United States Trustee.

15           Your Honor, specifically turning to the attempt to  
16 conduct these examinations under Rule 2004, notwithstanding  
17 what we believe to be the utter lack of authorization under  
18 statute to conduct these investigations, it is clear that under  
19 Rule 2004, the United States Trustee has no greater rights than  
20 those afforded to any other creditor or party in interest. Its  
21 examination may only relate to the acts, conduct, property,  
22 liabilities, or financial condition of the debtor or to any  
23 matter which might affect the administration of the debtor's  
24 estate or to the debtor's right to a discharge.

25           The U.S. Trustee must also show good cause for taking

1 the examinations. Good cause has been defined as the  
2 examination being necessary for the protection of a legitimate  
3 interest. We would submit that in the absence of statutory  
4 authority to conduct the very investigation that the United  
5 States Trustee attempts to conduct, there is no interest that  
6 is affected.

7 Good cause may also be found if it's necessary to  
8 establish a claim of the examiner or if denial of the  
9 examination would cause undue hardship. The U.S. Trustee has  
10 no claim in these cases, and the U.S. Trustee has shown no  
11 hardship. What is known and what is certain is that good cause  
12 does not exist when there are no remaining issues affecting the  
13 administration of the estate. That is clearly the case here.

14 In each of these cases, with the exception of *Hill*,  
15 the requested examinations will have no affect on the  
16 administration of these Chapter 13 debtors' cases or their  
17 estates. Three have been closed and discharged. The so-called  
18 issues, and that is the mantra that the United States Trustee  
19 seems to use, I quote, in each of its cases, quote, 'issues  
20 remain.' There are no issues. There are no contested matters  
21 save and except in *Hill*. Matters have been resolved by the  
22 debtor and by the creditor, Countrywide. That is the process,  
23 the adversary process, of the Chapter 13 system at work, and  
24 that is how it is supposed to work.

25 Indeed, the *Hill* case is a prime example of how it

1 does work. The debtor filed a motion to enforce discharge. It  
2 disagreed with the action Countrywide took. The debtor has  
3 served discovery pursuant to that motion. The debtor has  
4 actively participated in that case to enforce what the debtor  
5 perceives as its rights and to what the debtor objects to on  
6 the part of Countrywide.

7 That matter is a contested matter under Rule 9014.  
8 It carries with it the protections and limitations of discovery  
9 under Rule 7030. That is not what the United States Trustee  
10 seeks to do in this case; rather, these cases. It seeks to  
11 exhume long since retired matters in order to conduct some as  
12 yet unstated investigation into the acts and conduct of  
13 Countrywide. If Countrywide is going to be called into an  
14 examination room to answer questions to the degree that it has  
15 been called under these subpoenas, Countrywide or any other  
16 party in interest should be afforded some due process notice of  
17 exactly what it is being investigated of, if indeed the  
18 investigator has the power to conduct the investigation.

19 We would submit that the U.S. Trustee's attempt is,  
20 as the Court in *Continental Forge Company* indicated, a device  
21 to launch into a wholesale investigation of a non-debtor's  
22 private business affairs. That effort was specifically  
23 rejected by this Court in the *Continental Forge* case.

24 **THE COURT:** Mr. Connop, I have to interrupt there.  
25 Just as an aside, did you notice who the attorneys were in that

1 case?

2 MR. CONNOP: I did, your Honor.

3 THE COURT: Very good; keep going.

4 MR. CONNOP: All right.

5 Your Honor, I pointed out initially in my argument  
6 the over-breadth of the document requests and examination  
7 topics. None of these document requests or examination topics  
8 are specifically focused on the somewhat ambiguous issues that  
9 the U.S. Trustee has proffered. As I indicated, they don't ask  
10 for an examination of a representative of Countrywide to tell  
11 them why there were three motions to dismiss filed. They don't  
12 ask Countrywide to produce a witness to testify why a motion  
13 for relief from stay was filed in the *Olbetor* case. They don't  
14 ask for a witness to testify why a proof of claim was filed in  
15 any particular case or if there was merit to the debtor's  
16 objection.

17 We cite the case *Koch versus Koch Industries*, 203  
18 F.3d 1202, out of the Tenth Circuit. This is not a case  
19 involving the U.S. Trustee, and indeed, we're somewhat  
20 hamstrung because there are no reported decisions involving the  
21 U.S. Trustee in the broad, wide-ranging effort to take  
22 discovery that it is seeking in this case.

23 But the Tenth Circuit noted in a very lengthy opinion  
24 involving a family dispute over ownership of certain oil and  
25 gas assets 'When a plaintiff first pleads its allegations in

1 entirely indefinite terms without knowing of any specific  
2 wrongdoing by the defendant and then bases massive discovery  
3 requests on those nebulous allegations in the hope of finding  
4 particular evidence of wrongdoing, that plaintiff abuses the  
5 judicial process.'

6           The language of the Tenth Circuit describes this  
7 situation to a 'T'. The allegations raised by the U.S. Trustee  
8 or, as it puts it, 'nonetheless, issues remain', are not even  
9 indefinite; they are absent. The discovery requests are  
10 predicated wholly, presumably, on these indecipherable  
11 allegations. We would submit, your Honor, that it is not  
12 Countrywide in the context of its activities in these Chapter  
13 13 cases that has abused the judicial process. The abuse  
14 occurs when an agency that is not empowered by statute presumes  
15 to overstep the bounds of its statutory authority.

16           Finally, your Honor asked us to address whether the  
17 context cases pointed to any situation of systemic abuse of the  
18 bankruptcy system, and the answer to that, we submit, is 'No'.  
19 The Court observed that, in its review of the CM-ECF database  
20 in this District, Countrywide appeared as a creditor or as a  
21 party in interest in over 5,000 cases and had filed, from the  
22 Court's investigation, over 800 proofs of claim. These cases  
23 point to no systemic abuse of the system.

24           Three motions for relief; one was denied without  
25 prejudice; one was precipitated by the Chapter 13 Trustee's

1 withholding of payments; and one was precipitated by a Chapter  
2 7 debtor's post-conversion default. One case involved a claim  
3 objection; one case involved a motion to determine that  
4 mortgage current; one involved motions to dismiss for serial  
5 filings; and the final one, the *Hill* case, involved a motion to  
6 enforce discharge.

7           The U.S. Trustee argues that the fact that these  
8 cases were closed or that final orders were entered should not  
9 bar its attempt to take discovery in this case. The U.S.  
10 Trustee cites several cases for that proposition at footnote  
11 six of its brief. We would submit that when read, your Honor,  
12 those cases stand for substantially the opposite proposition.

13           The first case was *Adair versus Sherman*. In that  
14 case, a Chapter 13 debtor attempted to assert a Fair Debt  
15 Collection Practices Act claim against the seller and financier  
16 of an automobile. The debtor contended that the creditor had  
17 filed an inflated proof of claim and attempted to secure the  
18 collateral back, and fees and costs associated with that,  
19 through the filing of this over-inflated proof of claim.

20           The debtor had not objected to that proof of claim  
21 before confirmation of its plan but instead attempted to attack  
22 the proof of claim through a separate Federal Act violation  
23 filed in federal court. The Court, dealing with and denying  
24 the debtor's attempt to end-run the *res judicata* effect of the  
25 confirmation order, noted that the series of authorities it



1 cited led the Court to the conclusion that, when a proof of  
2 claim is filed prior to confirmation and the debtor does not  
3 object prior to confirmation, the debtor may not file a post-  
4 confirmation collateral action that calls into question the  
5 proof of claim, citing a case, *Justice Oaks*, an Eleventh  
6 Circuit case in 1990, and the *Ross* case, which I don't see  
7 immediately here, for that proposition. I'll get the Court the  
8 cite -- Oh, it's *In Re: Ross*, 162 B.R. 785.

9           The law is well-settled that a confirmation order is  
10 *res judicata* as to all issues decided or which could have been  
11 decided at the hearing on confirmation.

12           The Court went on to state, in short: 'The bankruptcy  
13 process provides protection against fraudulent proofs of claim.  
14 Mr. Adair, the debtor, had the opportunity to contest Sherman  
15 and Sherman's proof of claim and practices related thereto in  
16 the Bankruptcy Court. Because he chose not to, he is barred  
17 from doing so here.'

18           Similarly, in the *In Re: Knox* case, the Court there  
19 held that a debtor could not prosecute in a separate action a  
20 similar case asserted by the debtor in *Adair* when she had  
21 already received the damages relief that she had sought by the  
22 process of a proof of claim objection that she had actually  
23 prosecuted. The Court did note, however, that the damages  
24 remedy was separate from any claim for 9011, violation of Rule  
25 9011, and the debtor could pursue that separately. It does

1 not, however, indicate that old cases long since disposed of  
2 can be resurrected for the purpose of examination.

3 In each of these cases, they have been adjudicated,  
4 the contested matters have been adjudicated, hearings held and  
5 orders entered.

6 Your Honor, I thank you for your patience. I'd like  
7 to conclude.

8 In sum, the United States Trustee has pointed to no  
9 statute that authorizes it to conduct investigations of parties  
10 in interest or creditors. Yet, four specific sections of the  
11 Bankruptcy Code do authorize investigations by the Chapter 7  
12 Trustee, by creditors committees, by examiners, and by  
13 Trustees. The U.S. Trustee is empowered to examine debtors at  
14 the first meeting of creditors under 343 and to examine the  
15 debtor on whether the debtor can obtain a discharge under  
16 727(c). The U.S. Trustee can point to no reported opinion that  
17 has authorized it to conduct these investigations.

18 Section 307 requires issues; issues, matters that are  
19 before the Court. There are none in these cases with the  
20 exception of the *Hill* case. And the *Hill* case is a prime  
21 example of how the adversary system works. There is a  
22 contested matter. The parties are engaging in Rule 7030  
23 discovery and other discovery presumably under the deposition  
24 rules and other discovery rules in the Federal Rules of Civil  
25 Procedure.

1           The debtor in that case has vigorously supported its  
2 position. The Chapter 13 Trustee, although the Court noted in  
3 its recent order, has not moved for leave to intervene, has  
4 that power and presumably will do so, as presumably will the  
5 United States Trustee. The propriety of their interventions  
6 can be addressed when that issue is taken up.

7           I would submit to the Court that the ramifications of  
8 the United States Trustee's interpretation of its power is  
9 really staggering, and it doesn't relate simply to Countrywide.  
10 It affects any party in interest in any case under Title 11  
11 filed in any court. Countrywide happens to be the subject of  
12 this proceeding. Other creditors and parties in interest have  
13 the right to avoid an unreasonable intrusion into their  
14 affairs.

15           As we noted in the materials that we submitted to the  
16 Court, the U.S. Trustee is proceeding with parallel  
17 investigations, or attempts to investigate, in two cases in  
18 Florida. The United States Trustee has threatened  
19 investigations in other cases, yet its investigation is  
20 directed overall to Countrywide, not to the specific issues in  
21 these cases.

22           The Court has noted that there are 5,000 cases where  
23 Countrywide is involved. Who can guess how many are involving  
24 other mortgage lenders, how many involve credit card companies,  
25 how many involve Duquesne Power and Light, how many involve

1 automobile financing companies; companies that are regular  
2 creditors in cases?

3 The U.S. Trustee presumes, without limitation, there  
4 is no time limit on the look-back period that it seeks to  
5 examine, resurrect and exhume old cases that have been  
6 discharged, dismissed, and closed, and adversary proceedings  
7 and contested matters that have been settled by the parties in  
8 interest.

9 The toll on this system is substantial. It is  
10 inappropriate. The U.S. Trustee in one of the Florida  
11 proceedings, in attempting to address the burden on  
12 Countrywide, made the following statement, which I found  
13 telling. This is Exhibit U of Countrywide, page 19, paragraph  
14 52, in its argument that Countrywide would not suffer  
15 irreparable injury if a stay is not granted. I quote:  
16 'Countrywide is a mammoth company. It can afford to spend a  
17 modest sum to explain why it filed an improper claim' -- I will  
18 say allegedly improper claim -- 'and it can always go back to  
19 the trial court if it develops evidence that its expenses are  
20 really getting out of hand. The motion to stay should  
21 therefore be denied.'

22 Your Honor, the right of a creditor to be examined  
23 where there is an appropriate statutory basis for the  
24 examination is not a means test. The fact that Countrywide is  
25 a large company involved in a number of bankruptcy cases does

1 not, I submit, mean that the United States Trustee is empowered  
2 to conduct examinations beyond its power, leaving Countrywide  
3 or any other party in interest with the option of going back to  
4 court if it's getting too expensive. That is inappropriate.

5 Your Honor, the U.S. Trustee lacks the statutory  
6 authority to conduct the discovery requested. Even if it did,  
7 the discovery it requested does not pertain to the issues that  
8 it purports to identify. Your Honor, we would submit that  
9 these notices of examination and subpoenas should be quashed.

10 Additionally, your Honor, in our discussion of the  
11 *Hill* case, I would point to the Court that that matter is a  
12 contested matter, and the parties are entitled to conduct  
13 discovery in that contested matter under Rule 9014, and the  
14 parties are engaging in discovery. If discovery is permitted  
15 on an issue, a viable issue in a case, that is the vehicle for  
16 conducting discovery, where the protections afforded by the  
17 federal rules are available.

18 Your Honor, thank you for your time.

19 **THE COURT:** Let me ask you one question. Your last  
20 comment, 'If discovery is effected based upon a viable existing  
21 issue in a case'; is that what you're saying would be the only  
22 time that the U.S. Trustee ever has an opportunity for  
23 participation in a discovery because there's a contested matter  
24 or an adversary matter pending? Is that your position?

25 **MR. CONNOP:** Your Honor has --

1           **THE COURT:** Yes or no, and then explain it to me.

2           **MR. CONNOP:** Yes.

3           **THE COURT:** Okay.

4           **MR. CONNOP:** And the reason, your Honor, is that  
5 Congress granted the United States Trustee the power to  
6 investigate; investigate in the two specific Code Sections I  
7 cited.

8           Additionally, as your Honor noted last week or early  
9 this week in your order governing intervention, if the U.S.  
10 Trustee can establish the requisite ground rules or predicate  
11 for intervention in a contested matter or intervention --

12           **THE COURT:** I think I said appropriate pleading. Now  
13 you're putting words in my mouth.

14           **MR. CONNOP:** I don't mean to --

15           **THE COURT:** The order speaks for itself.

16           **MR. CONNOP:** I understood.

17           **THE COURT:** Okay, keep going, keep going, keep going.

18           **MR. CONNOP:** The appropriate standards to --

19           **THE COURT:** I said appropriate pleading.

20           **MR. CONNOP:** Okay, the appropriate pleading --

21           **THE COURT:** Go ahead. Very careful how I chose my  
22 words on that phrase. Go ahead.

23           **MR. CONNOP:** Thank you, and I apologize because I  
24 don't have your order in front of me.

25           **THE COURT:** All right.

1           **MR. CONNOP:** But if it can establish by appropriate  
2 pleading which, presumably, would also establish the  
3 appropriate grounds for intervention, then it can conduct the  
4 discovery it believes is relevant and that can lead to the  
5 discovery of admissible evidence. That's --

6           **THE COURT:** Okay. So your position is that the U.S.  
7 Trustee never has the right to take a 2004 examination?

8           **MR. CONNOP:** In the absence of a statutory  
9 authorization or an issue.

10          **THE COURT:** Okay. If there's an issue; you're saying  
11 issue equates to adversary proceeding or contested matter?  
12 2004 exams are not available when you have adversaries or  
13 contested matters? You're relegated to your federal discovery  
14 as authorized by the Federal Rules of Civil Procedure  
15 incorporated into the Bankruptcy Procedure Rule context?

16          **MR. CONNOP:** The answer to your question, your Honor,  
17 is 'Yes.' Investigations and examinations under Rule 2004 are  
18 authorized to parties in interest to examine the acts and  
19 affairs of the debtor to the administration of the bankruptcy  
20 estate, not to the internal business affairs of a creditor.

21               Moreover, again, the -- I suppose that if the U.S.  
22 Trustee can establish its role as a party in interest, although  
23 Congress was very careful to identify the U.S. Trustee separate  
24 from the role of party in interest in connection with the Code.  
25 Otherwise, there would be no distinction between 1109(b) and

1 Section 307.

2 The U.S. Trustee can move and the Court can -- It's  
3 been an hour and my throat's getting dry -- can consider  
4 whether the circumstances are appropriate. In this case, your  
5 Honor, I would submit they cannot. They have not shown the  
6 requisite grounds or standing to step into these closed cases  
7 and conduct Rule 2004 examinations.

8 **THE COURT:** All right. Thank you very much.

9 Mr. DePasquale?

10 **MR. DEPASQUALE:** Your Honor, with your permission, I  
11 would like to rest on my briefs and just discuss briefly, very  
12 briefly, standing and then answer any questions that the Court  
13 may have. I believe that my colleagues and I have well-briefed  
14 the law and the issues of this case, so I'd rather use my time  
15 to just answer your questions, if any.

16 With regard -- just some brief comments, your Honor,  
17 though, on standing.

18 **THE COURT:** Mr. DePasquale, I'll give you a little  
19 heads up. My questions will be few, if any.

20 **MR. DEPASQUALE:** Great.

21 **THE COURT:** Okay. Just so you know. So if you're  
22 just going to rest on a few comments, don't count on me to ask  
23 extensive questions. I've asked a lot up to this point, and  
24 I've read all the pleadings and all the briefs, and I have a  
25 pretty good idea of what's going on. But just to give you a



1 little heads up there, okay, so you're not surprised if there  
2 are no questions, okay?

3 **MR. DEPASQUALE:** Understood, your Honor. It's been  
4 well-briefed, and I hope that our brief has answered the 12  
5 questions that you had placed to the parties.

6 With regard to standing, your Honor, it is clear the  
7 six Circuits that have addressed this, including the Third  
8 Circuit, and have held that we have broad statutory standing to  
9 do a number of things.

10 With regard to our oversight responsibility, that is  
11 incumbent upon us under 586 to supervise and monitor all  
12 matters under Title 11. There are, to my knowledge, Judge,  
13 this issue with regard to our standing to rise and be heard,  
14 has been addressed in Georgia in the *Miles* case which we cited.  
15 In that case, we opted to object to venue, and the debtor in  
16 that case said you had no standing under 307. The Bankruptcy  
17 Court in Georgia overruled that objection and specifically  
18 cited 307.

19 Three other Judges, your Honor, who have heard this  
20 issue on creditor abuse -- Judge Crystal in the *Del Castillo*  
21 matter, as you're aware of; Judge Hymen in the *Chadwick* matter  
22 -- have rejected these arguments and held that 307 is clear;  
23 586 is clear. We have the authority to raise and be heard on  
24 any issue, except we cannot file a plan of reorganization. I  
25 cannot think of broader language that anyone could use to tell

1 the world what our standing and authority is.

2           When Congress created the United States Trustee  
3 program, again, they empowered us and posed an obligation: You  
4 will supervise and monitor and take those actions as you deem  
5 appropriate to prevent delay of the process. One cannot  
6 imagine, given the legislative history to the United States  
7 Trustee program which we've placed in our pleadings, from that  
8 predicate where we are the watchdog, the broad statutory  
9 standing in 307, that we cannot make inquiry into a creditor  
10 abuse.

11           Yesterday -- or strike that -- the day before in  
12 White Plains, in a case where we're litigating similar issues  
13 against GMAC, Judge Harding, in what I would characterize as a  
14 preliminary ruling, said that he believed we had standing under  
15 307 and 586 to conduct a 2004 exam of GMAC. The courts, the  
16 Bankruptcy Courts that have addressed that issue, your Honor,  
17 have all held that we have standing.

18           Countrywide wants the Government out of the creditor  
19 abuse business, your Honor. If the Government, if the United  
20 States Trustee is expelled from the creditor abuse business,  
21 creditors will be left to their vices with consumers who lack  
22 the financial wherewithal to challenge and to remedy abuses of  
23 the bankruptcy system because they do not have the economic  
24 means. That's an absurd proposition, your Honor, given the  
25 history of the United States Trustee program from its inception

1 to now.

2 This Court is well aware that we take action against  
3 debtors. We bring actions under 329 against attorneys when the  
4 value of their services is less than -- strike that -- the  
5 value of their services is greater than what they provided to  
6 their client. This Court presumably hears a number of 329  
7 actions to disgorge attorney's fees. We examine bankruptcy  
8 petition preparers. We examine fees from creditors committees.  
9 We examine and oversee all matters under Title 11 because  
10 that's our obligation. The law on that --

11 **THE COURT:** Let me stop you. Mr. DePasquale, I  
12 apologize, but now you're saying things that -- Mr. Connop's  
13 argument is, though, where you have statutory authority to do  
14 all those things, you don't have statutory authority to do a  
15 2004 exam. Tell me where you get that authority and tell me  
16 especially, when Rule 2004(a) says -- limits the rights, at  
17 least ostensibly, on motion of any party in interest.

18 Mr. Connop says that Congress was very careful and  
19 the rules are very clear that the U.S. Trustee is not a party  
20 in interest and therefore, by its very terms, even if you have  
21 standing in all these other matters, by its very term, Rule  
22 2004 excludes the U.S. Trustee because it doesn't fit within  
23 the definition. Tell me why he's wrong.

24 **MR. DEPASQUALE:** He's wrong, your Honor, because one,  
25 respectfully, the rule cannot supersede the statute. Congress

1 was clear when they said we can raise any matter in any case or  
2 proceeding, presumably an implied task. If I'm going to come  
3 before you and say, 'Your Honor, under your inherent authority,  
4 we ask that you issue an order to show cause why a creditor  
5 should not be held in contempt or should not be sanctioned for  
6 a litigation abuse'; if I'm going to raise that matter, I have  
7 to do due diligence in an investigation. To do that, I'm  
8 relegated to the tools that are available to me, the procedural  
9 tools in the rules, which are Rule 2004.

10 The case law in the Third Circuit, *United Artists v.*  
11 *Walton* is what we cited on our brief, says that our standing is  
12 broad, and, unlike a private party, your Honor, and this isn't  
13 in *Walton* but, your Honor, a private party under the Supreme  
14 Court case law, which we cite in our brief, has to demonstrate  
15 a concrete and specific injury. There is no case law that says  
16 the Government, the United States Trustee, has to have an  
17 injury. We exist to protect the public's interest in the  
18 integrity of the system. Nothing in Rule 2004 says the United  
19 States Trustee cannot conduct one, and I'm --

20 **THE COURT:** No. No, but it says -- it defines who  
21 can, and Mr. Connop says you don't fit that definition.

22 I understand 307 statute trumps rules, okay, a  
23 procedure; I understand that argument. Tell me where you have  
24 case law support, by analogy or otherwise, that brings the U.S.  
25 Trustee within the same level or equates it to the party in

1 interest envisioned by Rule 2004.

2 **MR. DEPASQUALE:** Your Honor, a rule does not create  
3 the case law on rules, on any procedural rule. Procedural  
4 rules do not create substantive rights; they're merely a  
5 procedural rule. Rule 2004 cannot limit the right of the  
6 Government, under its authority under 307, to take an  
7 examination. I would reject that. I do not have case law on  
8 that. That was not briefed, your Honor.

9 **THE COURT:** Well, it should have been briefed.  
10 That's important. This is the rule. This is the very language  
11 of the rule that they've been saying you don't fit under. You  
12 should have provided that to me. I think that's critical to  
13 what we're talking about here. You're relying on mom, apple  
14 pie, and the American way to say that you have the right to  
15 come in here, and we have a procedural rule that creates the  
16 2004 exam. But for that rule, 2004 exams don't exist.

17 Tell me why the U.S. Trustee can take advantage of a  
18 procedural mechanism that, by its terms, appears to exclude the  
19 U.S. Trustee?

20 **MR. DEPASQUALE:** Your Honor, again, my proposition is  
21 simple; 307 and 586 give us broad statutory standing to examine  
22 creditor abuses. The rule cannot abdicate that. If this Court  
23 makes a finding that Rule 2004 is not available to us, then we  
24 would seek alternate remedy and bring a contested matter under  
25 Rule 9014 and avail ourselves to the discovery rules.

1           We do not believe we need to, your Honor. I'm  
2           unaware of any authority that says 2004 is not applicable to  
3           the United States Trustee. To the contrary, your Honor, and I  
4           will file a supplemental brief if this Court wishes, there are  
5           a number of cases where the United States Trustee has brought  
6           motions for 2004 exams. I know myself because I've litigated  
7           them where there have been motions to quash, and I am unaware  
8           of any reported decision where we've been denied a 2004  
9           examination. However --

10           **THE COURT:** All right, is there any reported decision  
11           where you've been sustained in these disputes over your  
12           authority on the motions to quash? That's what I'm asking.

13           **MR. DEPASQUALE:** Your Honor, I would have to file a  
14           supplemental memorandum.

15           **THE COURT:** All right. Okay, I think we've briefed  
16           this pretty *ad nauseum* here. That's a pretty important issue.  
17           I'm kind of surprised it was just assumed, by virtue of your  
18           status as the watchdog of the bankruptcy process, that you  
19           would fall within the parameters of the rule. It seemed pretty  
20           basic that we would do some wordsmithing here and parsing and  
21           figure out just how you actually do fit within that.

22           But okay, go ahead. I apologize for interrupting.  
23           Keep going. Go.

24           **MR. DEPASQUALE:** Your Honor, in sum, Countrywide  
25           wants us out of the creditor abuse business. That is an

1 unsupported theory of law. If not for the United States  
2 Trustee, creditor abuses, debtor abuses, abuses that occur  
3 every day by the parties that appear before this Court, will go  
4 unchecked. That's why the language in 307 is as broad as it  
5 is.

6 Without the United States Trustee, this Court would  
7 be limited to hiring special counsel, on its own authority,  
8 under its inherent authority, and under the authority under  
9 105(a), to investigate creditors, and then you would be  
10 overseeing the very lawyers that you appointed to do the  
11 investigation. That is axiomatic. The problems of that are  
12 axiomatic, your Honor.

13 There is a watchdog for the bankruptcy system; it is  
14 the United States Trustee. 307 gives us plenary authority to  
15 examine the conduct of parties that come before you and then  
16 report to you those facts and take such actions -- whether it  
17 be an order to show cause or whether it be a complaint -- to  
18 seek the proper redress; to vindicate the integrity of this  
19 system.

20 Whether or not debtors resolve their issues with  
21 Countrywide does not resolve whether or not violence has been  
22 done to the integrity of this Court. That is a separate issue  
23 that runs parallel to every matter that comes before this  
24 Court. It cannot be resolved by private parties; it can only  
25 be resolved by this Court and the agency, the Department of

1 Justice, which has been given the obligation and the mandate to  
2 supervise and monitor cases before you.

3 So with regard to the standing, your Honor, again, I  
4 would rest on my briefs, but I believe that based upon the  
5 holding of the cases, the precedents that have been established  
6 with regard to these matters, particularly against Countrywide,  
7 every court that has addressed this specific issue has held we  
8 have standing. The dearth of any contrary authority that we do  
9 not have standing, your Honor, I think that it is clear that  
10 this Court can comfortably rule we have standing and permit  
11 this inquiry to go forward.

12 Whether we call it an inquiry or an investigation is  
13 irrelevant. We want to look into what happened in these  
14 specific cases, then report to this Court what we find, and, if  
15 we feel appropriate, bring the appropriate motion to report  
16 these facts to you without passion or prejudice, and recommend  
17 appropriate sanction, if warranted. That's what we're seeking  
18 to do here.

19 With regard to the cases, your Honor, I would  
20 disagree, and I find it a bit disingenuous that the statement  
21 has been made that they don't understand what we're looking  
22 for. 2004 motions are very broad. They are, as at least one  
23 commentator Collier's reports, a legal fishing expedition. In  
24 the beginning when a party or when the Government looks at this  
25 matter, we're relegated to what we have in the papers and what



1 we can talk to local counsel for.

2 We want to get documents, we want someone to come in  
3 and sit down and we want to look at the documents first, find  
4 out what the policies were with regard to proofs of claim,  
5 filing motions for relief from stay; escrow, the escrow issues;  
6 the issues of the bouncing escrow.

7 Of course the initial discovery request is going to  
8 be broad, but it's broad within this topic, proofs of claim,  
9 motions for relief from stay, escrow. What is the policy?  
10 Then, what happened in this case? Come in and sit down with us  
11 and then we'll ask you: What happened in this case?

12 If during the course of a 2004 examination , the  
13 examinee, Countrywide, feels that it's overbroad, it doesn't  
14 relate to any matters with regard to this case or the issues in  
15 this case, they can move for a protective order; they can move  
16 to quash the 2004 examination.

17 Countrywide knows what we're looking for in these six  
18 cases, seven cases if we include *Hill*. Why was the escrow  
19 reported at one amount, then dropped, and then adjusted again?  
20 Why didn't they get it right the first time? We're worried  
21 about accounting issues; we're worried about representations  
22 made in motions for relief from stay; we're worried about  
23 representations made with regard to escrows. We want to know  
24 what happened in these cases.

25 We looked at ten cases initially that arose out of

1 over a hundred, 200 cases that the Chapter 13 Trustee had  
2 brought to this Court's attention because of stale checks.  
3 That was the beginning of our inquiry. We whittled that down  
4 to three cases because the debtors do not wish us to make  
5 inquiry into their financial affairs.

6 This is a very focused examination, contrary to what  
7 my colleague has represented to this Court. I need to know  
8 what the policies are with regard to how they account for  
9 proofs of claim and filed them with this Court, and I need to  
10 ask them, if this is the policy, then why did this happen in  
11 this case? Why was this escrow reported in one case at one  
12 amount, and then, at least in the initial mortgage statement  
13 with regard to Benvenuto, the mortgage statement that was sent  
14 to the debtor said an escrow was \$3,081 in the hole. Then in  
15 their phone call, reportedly they were told that it was 4326.  
16 And then in an e-mail, they're told that it's a 1,078. And  
17 then finally, in a consent order they're told that it's \$1,295.

18 You have a party coming before you filing thousands  
19 of proofs of claim. If there are problems, we merely want to  
20 identify it. Presumably they want to cure it themselves. We  
21 have no reason to believe that they would not want to cure it;  
22 they're a legitimate corporation. But we want to make sure  
23 that we do our job to monitor and supervise to make sure the  
24 pleadings that are being filed with this Court are accurate.

25 If they provide us sound explanations, your Honor,

1 we'll go away. If we don't and I file a pleading with this  
2 Court that is over the top, I'll face the consequences from  
3 this Court. I am fully confident that this Court will tell me  
4 that I've got no case if I have no case.

5 But all I'm asking right now, your Honor, is for  
6 limited discovery in these cases to tell me -- sit down with  
7 me, tell me what happened on the proof of claim in this case.  
8 Was this filed in accordance with your policy or is your policy  
9 broken? What happened with this motion for relief from stay?

10 There are three motions to dismiss that were filed.  
11 Countrywide will tell you that that's serial filings. Your  
12 Honor, there were three Chapter 13s; each one lasted over a  
13 year and the debtor made significant payments. In the second  
14 Chapter 13, the debtor made over \$21,000 of payments to  
15 Countrywide. So to characterize that as, when we filed the  
16 motions to dismiss for this -- you know, sometimes some  
17 bankruptcy debtors will file back-to-back 13s. That didn't  
18 happen, your Honor, with regard to that case. I believe it was  
19 the *Bach* case. No, strike that; it was the *Carleski* case.

20 The first 13 was commenced in March of 2000, and  
21 lasted --

22 **THE COURT:** I'm familiar with *Carleski*. I'm familiar  
23 with *Carleski*. I know exactly what happened. I read all the  
24 pleadings, I read all the --

25 **MR. DEPASQUALE:** Your Honor, it's my --

1           **THE COURT:** -- briefs.

2           **MR. DEPASQUALE:** It's my -- I'm sorry.

3           **THE COURT:** No, go ahead.

4           **MR. DEPASQUALE:** It's my job to bring the facts to  
5 you. I think we've articulated cause. We want to conduct  
6 narrow discovery. I'm not looking for privilege documents. I  
7 would like a privilege log, and I would like the Court to  
8 review matters *in camera*. We're looking to get to the bottom  
9 of what happened in these cases. That's all.

10           We have standing. This is an appropriate inquiry  
11 into what happened here. I would respectfully -- I understand  
12 this Court's concern about the language in 2004, in Rule 2004;  
13 however, I do not believe that rule can take away our authority  
14 to use that vehicle as a means to obtain information and get to  
15 the bottom of matters.

16           Bankruptcy Rule 1001, Judge, says that the Code and  
17 the Rules shall be interpreted to ensure the just, speedy, and  
18 efficient adjudication of issues before you. That's the *sine*  
19 *qua non* of bankruptcy; get cases administrated quickly.

20           If I have to bring contested matters, your Honor, and  
21 utilize formal discovery rules every time there may be an issue  
22 with a creditor or a debtor or an attorney, we're going --  
23 that's antithetical to how Congress and how the Rules Committee  
24 want us to administer cases. So, I would ask that the Court  
25 reject the argument that 2004 is not available to the

1 Government. And with that, your Honor, I'll wrap up my  
2 comments and thank you for your patience.

3 **THE COURT:** Thank you.

4 Tell me, in these other courts, have any rendered a  
5 formal opinion, a published opinion vindicating your rights or  
6 validating the Trustee's rights to proceed under 2004?

7 **MR. DEPASQUALE:** We've provided you with the orders,  
8 I believe, your Honor. I do not know whether they've been  
9 published so I'll not comment on that. I just don't know. I  
10 can find out for the Court.

11 **THE COURT:** No, no, that's okay; I just thought I'd  
12 ask.

13 All right, very good. I appreciate your comments;  
14 very helpful, and your briefs and everything is very helpful.

15 A couple of things though. First of all, anything we  
16 do here in this proceeding does not affect the contested matter  
17 and the discovery taking place in that contested matter in  
18 *Hill*, okay. This is all outside of the umbrella of that  
19 particular proceeding. So any of my comments, rulings,  
20 whatever, *Hill* is unaffected, the contested matter involving  
21 Countrywide. I just wanted to make sure that was clear.

22 Also, I have by no means come to a final conclusion  
23 as to how I'm going to rule on this particular matter, but I do  
24 have a focus. The critical issue in this matter is the  
25 standing and jurisdiction of the U.S. Trustee, as both of you

1 have indicated. The Court believes that the relevant statutory  
2 authority for the actions of the U.S. Trustee in this case is  
3 found in the provisions of Section 307 of Title 11.

4 Section 307 trumps everything. At this stage, the  
5 Court is inclined to agree that even Rule 2004, although the  
6 Court is troubled with the language in 2004, vis-à-vis the U.S.  
7 Trustee's attempt to utilize the procedure. But nevertheless,  
8 2004 was enacted in 1983; Section 307 was enacted in 1986.  
9 Statutory construction rules that the most recent prevails. We  
10 have a statute versus a rule. There are a lot of reasons why  
11 Section 307 would take priority over even Rule 2004.

12 But preliminarily, the Court seems to agree that the  
13 U.S. Trustee's position in that regard, although somewhat  
14 reluctantly, but nevertheless, it appears as if we're going in  
15 that direction.

16 A review of the statutory history shows that Section  
17 586, enacted in 1978 following the experience of the original  
18 U.S. Trustee pilot program, identified a finite list of duties  
19 for the U.S. Trustee, but also there was a catchall provision  
20 in Section 586(a)(3)(G) which authorized the U.S. Trustee to  
21 perform the duties prescribed for the U.S. Trustee under Title  
22 11 as well as Title 28, and such duties were to be consistent  
23 with Title 11 and Title 28, as the Attorney General may  
24 prescribe.

25 Thereafter in 1986, Section 307 was enacted which,

1 and this is the test we're stuck with. It's the plain meaning  
2 and wording of the statute is what we have to use as a court,  
3 and once we examine the plain meaning and wording of the  
4 statute, it can lead to only one conclusion, and that is that  
5 Congress intended to broaden the scope of duties and authority  
6 of the U.S. Trustee even further.

7           It's not an enabling statute as has been suggested by  
8 Countrywide in its brief, an enabling statute for 586; it's  
9 separate and apart, stands on its own footing, and in fact, as  
10 I indicated, appears to trump 586 and broaden the authority and  
11 jurisdiction of the actions of the U.S. Trustee; statutorily  
12 broaden the jurisdiction of this agency.

13           Common sense reading of the statute leads to only one  
14 conclusion, and that it is that it is not restricting, as  
15 Countrywide would have the Court accept by Countrywide's  
16 interpretation. In fact, although Countrywide's interpretation  
17 is interesting and appealing as to the effect of the various  
18 statutes, and I'll get into that in a minute, nowhere in Mr.  
19 Connop's presentation did he address how we deal with the clear  
20 and plain language of 307, and that's important here. And the  
21 Court, as I indicated, is required to give that the most  
22 consideration when considering the interpretation of a statute.

23           Section 307 specifically states 'The United States  
24 Trustee may raise and may appear and be heard on any issue in  
25 any case or proceeding under this Title but for the filing of a

1 plan.'

2           Now, Mr. Connop indicated that under no circumstances  
3 -- he waffled a little bit there when asked -- does the Trustee  
4 have the power to conduct or notice a 2004 exam. He didn't say  
5 because of the clear language of the Rule per se, but he said  
6 there's no statutory empowerment or no specific statute  
7 allowing for it. But for the specific wording of Rule 2004,  
8 the Court believes that 307 clearly, in its plain meaning and  
9 understanding, would provide and allow the U.S. Trustee to  
10 otherwise conduct a 2004 exam.

11           Countrywide points to many other instances of  
12 specific authority granted the United States Trustee and  
13 various other statutory grants of authority in the Bankruptcy  
14 Code as evidence of the restricting nature of Section 307, more  
15 so in the brief rather than the argument today, and Countrywide  
16 asks, rhetorically, why else would Congress include these  
17 specific grants of power if 307 was intended as anything other  
18 than an enabling statute for 586?

19           As I indicated, this Court is required to reconcile  
20 allegedly conflicting statutory language if at all possible.  
21 To adopt the construct that Countrywide posits would be  
22 contrary to the broad, expansive language and clear meaning of  
23 Section 307 and the discretionary authority granted by it.  
24 Therefore, this Court believes the better explanation for the  
25 many grants of specific statutory U.S. Trustee powers are



1 intended to exist in harmony with Section 307.

2           They are Congressional directives regarding those  
3 areas in which Congress, in some instances, mandates U.S.  
4 Trustee involvement or encourages U.S. Trustee involvement, to  
5 act in specific aspects of the Bankruptcy Code. This is a  
6 better reconciliation of the various statutory grants which  
7 both pre-date Section 307 and post-date Section 307 rather than  
8 adopting Countrywide's attempt to create a conflict between  
9 Section 307's purpose and the intent of these specific  
10 statutes.

11           Furthermore, case law, in this particular Circuit at  
12 least, supports and is consistent with this interpretation of  
13 the powers and authority of the United States Trustee as  
14 granted by Section 307.

15           Further, the test for determining the U.S. Trustee's  
16 standing in those cases in which the issue has been addressed  
17 is a liberal one; at least that's the Rule in the Third  
18 Circuit. And furthermore, Countrywide really has provided no  
19 contrary case law in this regard.

20           Therefore, Section 307 is to be broadly construed.  
21 It's not simply viewed as an enabling act for Section 586.  
22 Rather, it's an independent grant of standing and jurisdiction  
23 enlarging the U.S. Trustee's authority.

24           Countrywide discussed at some points that there were  
25 a number of cases that weren't even open when the Trustee

1 brought their notice for 2004 exam, and they were opened in a  
2 collateral proceeding at Miscellaneous Number 07-203 by the  
3 Chapter 13 Trustee, apparently. But since we determined that  
4 Section 307 is a broad grant of authority to the United States  
5 Trustee, it naturally follows that one of the powers the U.S.  
6 Trustee possesses is the authority to move to open closed  
7 bankruptcy cases.

8           Furthermore, there is case law in the Third Circuit  
9 that clearly supports this notion and the authority of the  
10 Trustee in this regard. If the U.S. Trustee possesses the  
11 statutory authority to raise any issue and appear in any case  
12 or proceeding, it logically follows that the U.S. Trustee is  
13 able to open cases in order to raise issues and be heard on  
14 them. So the Trustee, the U.S. Trustee, at least in this  
15 Court's mind, does possess the ability, if it had to, to go  
16 ahead and seek the opening of these cases which had previously  
17 been opened.

18           And that matter is pending, I understand, in  
19 Miscellaneous Number 07-203 as to whether or not that was  
20 appropriate, but it appears as somewhat of a moot point here in  
21 light of the interpretation this Court gives to Section 307,  
22 although I don't think this is, as you're going to see, it's  
23 not really important to the Court's ultimate decision in this  
24 case what I believe at this time will be the ultimate decision;  
25 but I'm going to further reflect on what's gone on here today

1 and what's been told to me.

2           So, the *Benvenuto*, *Carleski*, *Bach*, and *Topper* cases,  
3 which all represent prior closed cases, if pushed, this Court  
4 would most likely allow the U.S. Trustee to move to open and  
5 grant the opening, assuming the appropriate standard is met for  
6 that.

7           In the brief, not so much in today's argument  
8 although it was touched upon, Countrywide raised the defense of  
9 *res judicata*. We have closed cases, confirmation orders are  
10 *res judicata*, and that is absolutely true in the Third Circuit.  
11 There is case law, recent case law in this particular District,  
12 relying on prior Third Circuit authority that stands for that  
13 proposition. The problem is, the principle of *res judicata*,  
14 for purposes of barring the U.S. Trustee from filing a notice  
15 of 2004 examination, really is not applicable. There's no  
16 merit to that defense.

17           In this Circuit, for the defense of *res judicata* to  
18 apply, there must be an identity of the parties. Countrywide  
19 has not shown that the U.S. Trustee was a party to any of the  
20 confirmation orders. At best, that defense would only apply to  
21 the Chapter 13 Trustee who, nobody appears to argue, is  
22 independent of the U.S. Trustee, nor were the issues or causes  
23 of action currently contemplated actually litigated in the  
24 confirmation proceedings, resulting in a final judgment on the  
25 merits of the issues currently before the Court.

1           So, as a result of all the foregoing, the Court  
2 initially, at least at this point, feels inclined to find that  
3 the U.S. Trustee most likely possesses the power and authority  
4 to request a 2004 examination of Countrywide. The question  
5 then becomes: Can the U.S. Trustee exercise this power in the  
6 seven pending what I call 'context cases'?

7           We'd all agree; I don't think there's any dispute  
8 that the elements of the 2004 examination set forth in Federal  
9 Rules of Bankruptcy Procedure 2004(a), is that on the motion of  
10 any party in interest, the Court may order the examination of  
11 any entity. Now, the term of art or phrase 'any party in  
12 interest' is somewhat in play, but nevertheless, that's the  
13 language of Rule 2004.

14           2004(b) goes on to discuss the scope of the  
15 examination. And we're talking about an examination here. Mr.  
16 Connop raises the fact that this is an investigation. Mr.  
17 DePasquale didn't care how it was phrased. Well, I think it is  
18 important. This is not an investigation. 2004 does not allow  
19 an investigation; it allows for an examination. There's  
20 absolutely no authority for an investigation in Rule 2004.

21           It's pretty clear that the scope of the examination  
22 under 2004 'may relate only to the acts, conduct, or property  
23 or to liabilities and financial condition of the debtor or to  
24 any matter which may affect the administration of the debtor's  
25 estate.' The Court believes that's the critical phrase in this

1 particular proceeding.

2           In looking at the seven -- where there were ten --  
3 context cases, individually and in a vacuum, the majority of  
4 the problems sought to be examined by the U.S. Trustee appear  
5 somewhat benign. Admittedly, the issues currently at play in  
6 the *Hill* case, at least on the record created today, appear to  
7 be somewhat problematical for Countrywide, but again, these are  
8 just allegations on the record, and there are no findings  
9 whatsoever as of this stage. But those specific matters are  
10 being addressed in the pending contested matter.

11           A number of the context cases may be explained away  
12 as counsel error, negligence, and procedural failings. The  
13 Court can only assume the seven context cases are the most  
14 egregious examples of alleged Countrywide misconduct that the  
15 U.S. Trustee can find in this District arising over the last  
16 number of years or, I'd assume, more would have been presented  
17 to the Court.

18           I understand that ten were originally presented;  
19 three withdrawn because the debtors did not want to participate  
20 by filing the appropriate release, so we had ten at one time.  
21 Nevertheless, there does appear to be a common pattern, thread,  
22 or theme running through all of the current context cases  
23 involving the manner in which Countrywide calculates and  
24 determines the extent of its bankruptcy claim.

25           A number of the relief from stay cases are involved;

1 several proof of claim issues and two post-discharge injunction  
2 violation cases exist, of which *Hill* is one. All cases involve  
3 the calculation of the debtor's obligation to Countrywide while  
4 in bankruptcy. The common thread running through all the cases  
5 is the manner in which Countrywide computes its bankruptcy  
6 claim at various stages of the bankruptcy proceeding.

7 In the relief from stay cases, its computation of the  
8 Countrywide claim for purposes of filing and prosecuting the  
9 motion for relief from stay in the first place. In all the  
10 context cases, there appears to have been miscalculations and  
11 errors made in the claim determination process.

12 In the proof of claim cases, again, it goes to  
13 calculation of the Countrywide claim for bankruptcy purposes.  
14 Usually in the proof of claim cases, it's involved in the  
15 earlier stages of the cases, whereas the claim calculation in  
16 the relief from stay cases arise at any time during the case, I  
17 guess, except for the one case -- I think it's *Carleski* --  
18 where the three motions to dismiss were filed. In that case, I  
19 don't think the time for payment had even run. So, that was  
20 early on in the bankruptcy process, and that's a little  
21 different from a relief from stay case.

22 Finally, the post-discharge injunction cases involve  
23 the manner in which Countrywide computes its claim after a case  
24 is closed. Questions surely arise as to why Countrywide fails  
25 to honor the terms of the order approving the Trustee's final

1 account when it specifically states that all payments are  
2 current as of a specific time.

3           How is notice of this particular order handled  
4 internally by the staff person receiving the notice? How is it  
5 posted on the account? Many of those questions seem to be  
6 answered in the *Hill* contested matter, and that too will form a  
7 part in what the Court believes the final resolution of this  
8 matter will be. As such, the matters sought to be examined by  
9 the U.S. Trustee affect the administration of the estate,  
10 therefore meeting the requirement of 2004(b), and a 2004 exam  
11 would appear otherwise appropriate.

12           So the next question that must be answered is: What  
13 is the scope of the examination and the materials sought to be  
14 produced from Countrywide? Even the U.S. Trustee has  
15 acknowledged at various times in these proceedings that the  
16 right of the examining party in a 2004 exam is not unlimited or  
17 totally open-ended.

18           The Court does not agree with the proposition  
19 proposed by Countrywide that this allows the U.S. Trustee  
20 totally unfettered access to the business dealings of  
21 Countrywide. No, it does not. There is a scope limitation in  
22 the 2004 examination. Furthermore, the Court has the authority  
23 and ability to further limit that scope. Scope is determined  
24 on a case-by-case basis, depending on the circumstances before  
25 the Court.

1 But, even though, unlike discovery in an adversary  
2 proceeding or a contested matter, the scope of the exam has  
3 been described as a quote 'fishing expedition', nevertheless,  
4 there is an initial threshold or burden that must be met before  
5 the fishing expedition is allowed to proceed.

6 As Mr. Connop indicated, the Court in the *Continental*  
7 *Forge* case out of this District, added some requirements to the  
8 scope issue with respect to 2004 examinations, especially with  
9 respect to third parties not involved in the bankruptcy  
10 process, unlike Countrywide who is in fact involved in the  
11 bankruptcy process. In *Continental Forge*, Judge Bentz stated  
12 'Examination of witnesses having no relationship to the debtor  
13 affairs and no affect on the administration of the estate is  
14 improper.' Judge Bentz set the outer limit for the 2004 exam.  
15 Absolutely there's no right to go beyond that threshold.  
16 That's the upper bar for purposes of determining how far a  
17 fishing expedition may extend.

18 Case law has described this threshold requirement as  
19 something akin to what this Court believes is probable cause in  
20 a criminal case. As Mr. DePasquale indicated and I think Mr.  
21 Connop as well, it's pretty clear that the threshold  
22 requirement and term of art that we use is good cause. There  
23 has to be a showing of good cause. That is the limiting  
24 factor; the limiting element of a 2004 exam.

25 Good cause is determined on a case-by-case analysis,



1 depending on the particular facts involved. Even the fishing  
2 expedition must be limited to a specific body of water. And to  
3 continue with the fishing analogy and metaphor, how deep in the  
4 water we allow the expedition to go or the nets to fall or  
5 extend is subject to court control as well.

6 Here, Countrywide simply raises a per se objection  
7 though. At no time has this Court been given any specific  
8 information or indication as to the burden that this fishing  
9 expedition may have.

10 Now, Mr. Connop has argued and cited the comments in  
11 the Florida cases indicating that -- I'm not sure what the  
12 purpose of those Florida cases was -- but general conclusions  
13 as to how burdensome and oppressive going back in closed cases  
14 and finding out this information would be. There are no  
15 specifics, and I'm going to get into that because we're going  
16 to go through the specific requests here and find out just what  
17 may or may not be allowed. But there is no specific indication  
18 of what the cost and burden would be, and so the Court will  
19 specifically find that Countrywide has failed, to the extent it  
20 has a burden in that regard, with respect to that  
21 determination.

22 All agree for purposes of discovery, at least in the  
23 *Hill* matter we've agreed, that the scope of discovery in  
24 adversary proceedings and contested matters, not production,  
25 and I think there's a difference there in the terms we use even

1    though we throw them around and interchange them without  
2    recognition of what we were actually referring to.

3           The scope of discovery as it relates to a particular  
4    case or controversy involving an adversary proceeding or  
5    contested matter is any matter not privileged that is relevant  
6    to the claim or defense of any party and appears reasonably  
7    calculated to lead to the discovery of admissible evidence.  
8    That's Federal Rules of Civil Procedure 26(b)(1), which is  
9    incorporated into these proceedings.

10           The Rules of Civil Procedure go on; that relevant  
11   evidence means evidence having any tendency to make the  
12   existence of any fact that is of consequence to the  
13   determination more probable or less probable than it would be  
14   without the evidence. That's Federal Rules of Evidence 401.

15           In reviewing the information for which the United  
16   States Trustee seeks production, preliminarily it appears to  
17   this Court that the areas of examination in which testimony is  
18   sought and the United States Trustee seeks to question the  
19   Countrywide witnesses would appear to be discoverable even  
20   under the tighter standards of the Federal Rules of Civil  
21   Procedure, much less the fishing expedition standard for a 2004  
22   exam.

23           And I say that because in the seven context cases,  
24   the first four requests are identical; general propositions for  
25   information which, when we did our analysis, compared to what's

1 been produced already by agreement of Countrywide in the *Hill*  
2 case, appears to be already subject to turnover. The language  
3 may not be identical, but it's pretty close. And Countrywide  
4 withdrew its motion for protective order in that case and  
5 agreed to provide all that information. So, the Court is  
6 somewhat puzzled as to whether this is an academic exercise or  
7 there's some real substance. And I'm going to give the parties  
8 an opportunity to explain that to the Court.

9           With respect to questions five through 12 of each of  
10 the subpoenas or requests for production, those relate to  
11 specific cases. And in all the seven remaining context cases,  
12 the Court's understanding is there is a release obtained by the  
13 debtor, so we've overcome that hurdle. It's also the Court's  
14 understanding that as far as the loan histories and accounts,  
15 those have already been produced in the Miscellaneous Number  
16 07-203, so again, the Court is somewhat puzzled and scratching  
17 its head as to where the argument is here.

18           Nevertheless, the Court is of the mind, even if this  
19 was limited to a discovery issue as Mr. Connop has indicated,  
20 the preferred way in an adversary or contested matter, all this  
21 information would be subject to discovery under the Federal  
22 Rules of Civil Procedure. And the reason I say that is  
23 26(b)(1) identifies the scope of discovery, which I've just  
24 explained to you, and the Federal Rules of Evidence define  
25 relevant information, which is pretty broad. The scope of

1 discovery, as long as it's reasonably calculated to lead to  
2 admissible or relevant evidence, would be subject to the  
3 discovery requests and any objection would be denied.

4 Not only that, under the Federal Rules of Evidence,  
5 and specifically Federal Rules of Evidence 404(b), evidence of  
6 other acts is not admissible to prove character and not  
7 admissible to show action in conformity therewith, but it may  
8 be admissible for other purposes, such as proof of intent,  
9 plan, knowledge, or absence of mistake or accident.

10 Furthermore, Federal Rules of Evidence 406 goes on to  
11 say that, in regard to habit and routine practice, that  
12 evidence of habit or of the routine practice of an organization  
13 is relevant to prove the conduct of the organization on a  
14 particular occasion was in conformity with the habit or routine  
15 practice.

16 So, even if we are limited to the discovery standard  
17 in an adversary or contested matter, items five through 12 of  
18 each of the subpoenas regarding each specific case, based upon  
19 this Court's preliminary review, would be discoverable in any  
20 pending adversary or contested action. So for those reasons,  
21 the Court views the requests here not to be tantamount to the  
22 fishing expedition that your typical 2004 exam may rise to, but  
23 really would be similar to discovery that would be allowable in  
24 any pending adversary proceeding or contested action and has  
25 actually been produced in the *Hill* case, which forms one of the

1 context cases.

2 Now, even though Mr. Connop cries foul with respect  
3 to the fact that old cases were being opened by the U.S.  
4 Trustee or the Chapter 13 Trustee prior to that, there still  
5 remain three cases in the context cases that were opened or  
6 have been opened without U.S. Trustee involvement. Obviously  
7 the *Hill* case; we're very familiar with that. That was opened  
8 on motion of the debtor.

9 Likewise *Stemple*, Case Number 03-11792, which  
10 involves an objection to the claim filed by the debtor, where  
11 discrepancies in the claim amount were advanced by Countrywide  
12 was open at the time of the 2004 notice being filed.

13 *Olbetor*, Case Number 04-33361, was also open at the  
14 time the U.S. Trustee's notice of 2004 exam was filed.

15 So, any foul as a result of the Trustee going back  
16 and opening up long-closed cases really is rendered moot,  
17 because we have three context cases that already were opened  
18 without U.S. Trustee involvement. And even Mr. Connop would  
19 agree that, under 307, even though the U.S. Trustee can't file  
20 a notice of a 2004 exam, the U.S. Trustee does have standing to  
21 appear and raise issues. In fact, that happened in *Hill*.

22 So, the Court believes that based upon all this, it's  
23 time to review the requests for discovery and find out where  
24 the fight really is, and why. Now, I asked -- I ordered the  
25 parties to communicate and get together and resolve the

1 discovery requests. Based upon the telephone conversation we  
2 had with all parties earlier in the week that is now part of  
3 the record, the Court was advised that the parties met in good  
4 faith and tried to resolve their differences and couldn't  
5 resolve any.

6 Now, I am surprised because when the Court reviewed  
7 these issues, as I indicated, most of them have been agreed to  
8 by Countrywide already in the *Hill* case, and there's not much  
9 left over. And for purposes of the other specific information  
10 from the seven context cases, it would appear it's all  
11 discoverable anyhow, even under the more strict standard of the  
12 Federal Rules of Civil Procedure as set forth in Rule 26.

13 So, I'm a little disappointed, once again, that the  
14 parties can't come together and follow their obligations under  
15 the Federal Rules of Civil Procedure regarding discovery, under  
16 this Court's order, and just in a manner as professionals to  
17 expedite and resolve issues that should not be before the  
18 Court.

19 Now, I'm not going to go any further than that, but  
20 we're going to go through these discovery requests, and if the  
21 Court determines there's some gamesmanship, lack of good faith  
22 in resolving these discovery requests, the Court will take the  
23 appropriate action.

24 And now I'm going to tell you what we're going to do;  
25 what the Court is inclined to do, depending on what we hear

1 further from counsel and depending on what the Court decides as  
2 we go forward and I assimilate the argument and positions taken  
3 by each side now that you've further clarified what's contained  
4 in your briefs, and determine what the Court will ultimately  
5 do, even though I've given you an indication of where things  
6 seem to be going.

7           Ultimately the Court, unless I hear objections from  
8 the parties in this regard, believes that the appropriate  
9 approach in this matter is to stay all the context cases and  
10 the 2004 examinations requested in those cases but for the *Hill*  
11 matter. The *Hill* matter has been opened; there's no issue as  
12 to the U.S. Trustee coming in after the fact trying to open it  
13 up. There's a pending issue there in which Countrywide has  
14 acknowledged the right of the U.S. Trustee, the Chapter 13  
15 Trustee, and obviously the debtor, to participate.

16           There are issues in the *Hill* matter which affect the  
17 bigger issue that the Court has identified, which appears to be  
18 how Countrywide determines and calculates its bankruptcy proofs  
19 of claim, not how Countrywide determines how it's going to  
20 invest any profits or declare dividends or market their other  
21 businesses that may fall under the Countrywide umbrella,  
22 whatever it may do. So Mr. Connop, rest assured this is not a  
23 wholesale -- the Court is not going to allow wholesale  
24 investigation into all the business affairs of Countrywide.

25           Rather, assuming we ultimately allow this 2004

1 examination, the scope of the examination is going to be  
2 limited as the Rule suggests, as interpreted by case law and  
3 the facts of these particular matters, with the common thread  
4 or theme as identified by the Court running through all of  
5 them.

6 By staying all the other pending cases and allowing  
7 *Hill* to go forward, 2004 exam, we eliminate a number of issues  
8 that seem just to cloud the ultimate bottom line here along the  
9 authority of the U.S. Trustee to proceed and to the scope of  
10 that examination. So the Court is inclined to take that  
11 position. Again, I'm going to further think about it, but now  
12 I'm going to ask the parties and I'm going to ask Mr.  
13 DePasquale: What are looking for here? What are you looking  
14 for here that you aren't already getting in *Hill*?

15 **MR. DEPASQUALE:** Your Honor, in the context of the  
16 remaining cases, we simply want to know, again, what the policy  
17 was. How do you formulate what's owed? How was that  
18 communicated to your local counsel? Is there sufficient  
19 supervision there so there's not a payment --

20 **THE COURT:** Let me stop you right there. Everything  
21 you said is being provided in the *Hill* contested matter, isn't  
22 it?

23 **MR. DEPASQUALE:** Not with respect to the other cases,  
24 your Honor, the facts in the other cases.

25 **THE COURT:** No, no, stop there. I'm talking about



1 the general concept. You have filed seven notices of 2004  
2 exam, and the first four questions in each one of them are  
3 identical. So, if they answered in the *Hill* case, they've  
4 answered every one in the other six cases, isn't that correct?

5 **MR. DEPASQUALE:** Your Honor, absolutely. When we  
6 filed --

7 **THE COURT:** All right, let me stop you there. Okay,  
8 that's my point. Forget about the numbers five to 12 that go  
9 to specific cases; that's the easy one. Tell me about -- And  
10 that's the one -- I think all that's discoverable under the  
11 Federal Rules of Evidence. That's all indication of habit or  
12 routine or other acts. That's actually relevant testimony.  
13 That doesn't just lead to admissible or relevant testimony;  
14 that's relevant testimony. You don't need to file ten notices  
15 of 2004 exam to get that. You probably could get -- Well,  
16 we're going to limit it to the seven since you withdrew the  
17 ten, but you probably could have gotten it, but for the  
18 financial information, you probably could have even gotten it  
19 in the three you withdrew.

20 But having said that, in the first four items that  
21 you're requesting, how do they differ from what, on consent, is  
22 being provided by Countrywide?

23 **MR. DEPASQUALE:** Indeed, your Honor, they don't, and  
24 I'm not asserting -- One, I'm not asking for redundant  
25 discovery. They are the same. If --

1           **THE COURT:** All right, let me stop you there. Then  
2 it's a moot question, isn't it?

3           **MR. DEPASQUALE:** Indeed, your Honor.

4           However, when --

5           **THE COURT:** Well, what are we here for? What are we  
6 doing? Why didn't you come back to me when I told the two of  
7 you to meet and work out the discovery requests? Why didn't  
8 you come back and say, 'Items one through four have been  
9 provided -- will be provided in the underlying *Hill* contested  
10 matter? Why didn't you do that?

11           **MR. DEPASQUALE:** Your Honor, I believe that Mr.  
12 Connop and I agreed that it would be moot; that one through  
13 four, we're getting policy. I'm not here pursuing something  
14 that we're getting in *Hill*.

15           **THE COURT:** Let me stop you. Let me stop you.  
16 Mr. Connop.

17           **MR. CONNOP:** Yes, your Honor.

18           **THE COURT:** Is that your position? You agree that  
19 the *Hill* case provides one through four of the request for  
20 production --

21           **MR. CONNOP:** Yes, your Honor.

22           **THE COURT:** -- in the subpoena?

23           **MR. CONNOP:** It does.

24           **THE COURT:** Why didn't you guys tell me that in our  
25 Monday phone call? You told me you met and you talked and you

1 worked real hard but you couldn't come to any agreement.

2           **MR. CONNOP:** Your Honor, I apologize if we gave that  
3 impression.

4           **THE COURT:** Absolutely you gave that impression. And  
5 I bit my tongue because of the admonition I gave you before  
6 about your certification on your protective order, and I  
7 figured, well, I could go in and I'm going to inquire of what  
8 they actually did, but I'll hold off. I'm going to keep quiet  
9 because, hey, I'm going to take them at their word. Now you  
10 two are telling me we have an agreement to items one through  
11 four in the subpoena, is that correct?

12           **MR. CONNOP:** Your Honor, those will be produced in  
13 any event. It was the --

14           **THE COURT:** Mr. Connop, can you answer a yes or no  
15 question for me, please?

16           **MR. CONNOP:** Yes, your Honor.

17           **THE COURT:** Finally.

18           Mr. DePasquale, do you withdraw your request for  
19 items one through four now that you have an agreement that  
20 that's all provided in the underlying *Hill* contested matter?

21           **MR. DEPASQUALE:** Yes, your Honor.

22           **THE COURT:** Unbelievable. So now we're into the  
23 seven context cases, the specific items, is that correct?

24           **MR. DEPASQUALE:** Yes, sir.

25           **THE COURT:** Mr. Connop.

1           **MR. CONNOP:** Yes, your Honor.

2           **THE COURT:** What's the problem? Those are specific.  
3 Those are seven -- those are tailored to each debtor in a  
4 bankruptcy case. Those are pretty focused. Those are  
5 streamlined. Now, the one through four, I can agree with you  
6 those could have been pretty broad-based. Until you gave up  
7 the fight in the *Hill* matter last week on February 14<sup>th</sup>; once  
8 you did that, in my mind, those were moot.

9           But tell me: What is your problem with items 12  
10 through five (sic) in every case other than *Hill*?

11           **MR. CONNOP:** Your Honor --

12           **THE COURT:** Pardon me; five through 12. Pardon me.

13           **MR. CONNOP:** Your Honor --

14           **THE COURT:** In every case other than *Hill*.

15           **MR. CONNOP:** The Court has made pretty clear today  
16 what its position is on our fundamental arguments dealing with  
17 the powers of the U.S. Trustee to perform the examinations.  
18 That was the basis for our dispute with Mr. DePasquale  
19 concerning the specific issues. We did not feel they had the  
20 legal authority to engage in that discovery, and we could not  
21 agree to simply turn those matters over.

22           However, your Honor, should you ultimately determine  
23 that, indeed, the U.S. Trustee is entitled to this discovery,  
24 we are not going to lodge continued objections. We will  
25 produce that information subject to the final determination of

1 their authority to conduct these examinations. Hence, in this  
2 context, in this context we are not going to argue  
3 specifically, or even generally, that should the Court  
4 determine that these matters are subject to examination despite  
5 our arguments to the contrary, I'm not going to insist or argue  
6 to you, your Honor, that they cannot have access to our  
7 computer system for purposes of these proofs of claim or  
8 motions for relief from stay. That is subsumed in your Honor's  
9 ultimate conclusion expressed here today or ultimately in a  
10 written opinion. It is now apparently moot.

11 I'm sorry, your Honor; I was contesting --

12 **THE COURT:** Okay.

13 **MR. CONNOP:** -- the U.S. Trustee's ability to have  
14 that information in the first instance. Your Honor has  
15 indicated they do.

16 **THE COURT:** Well, I don't know. I'm still going to  
17 chew it over a little bit. But to be honest with you, you  
18 raised some points I'm going to look into. You know, I'm not a  
19 hundred percent sure, but we've worked on it; we went through  
20 the briefs and the prior argument. Based on that, we felt that  
21 this is the appropriate result, all things considered, even  
22 though the specific language of 2004 still is troublesome.

23 Nevertheless, I think -- But then, I'm a bottom line  
24 person, okay, and I understand this battle is being fought all  
25 over the globe. And I'm happy to write an opinion and let this

1 Bankruptcy Court speak for the Western District of Pennsylvania  
2 and let it be appealed to the District Court of whatever.

3 But again, my view is here we have the greater good,  
4 and that is solving the specific problem that's before me, and  
5 sometimes that can be achieved by cooperation and resolution,  
6 as was done in *Hill*. I mean *Hill* seemed to be a perfect  
7 example of it. And when I say '*Hill*', the contested matter.  
8 *Hill* is still in play in this matter.

9 But, as a result of the *Hill* resolution, it appeared  
10 to this humble Court that this issue pretty much has gone away,  
11 especially when you view, you know, even if a contested matter  
12 had been filed, the specific information from the seven context  
13 cases, assuming the releases had been obtained, which  
14 apparently they have, would all be subject to a cursory order  
15 of any court allowing it, I mean, if an objection was raised.  
16 Pretty basic stuff. In any lawsuit you're allowed to get other  
17 information to show common plan, scheme, design, habit,  
18 routine; things like that.

19 So, okay, if that's where we are, then there is still  
20 a bigger issue and we'll deal with that then, but as far as the  
21 underlying matter then, it sounds as if it's pretty well on its  
22 way to resolution.

23 Mr. DePasquale, you asked for an opportunity to file  
24 a short brief on the issue of the Court's problem with Rule  
25 2004. Since this is where we're going and now this is really

1 the focus, it's a matter of law as opposed to a result in this  
2 particular case, how much time would you like to do that? I'd  
3 like you to -- Not a real long time; I'd like to get going on  
4 this.

5 **MR. DEPASQUALE:** Your Honor, would two weeks be too  
6 long? I want to do an exhaustive search for you.

7 **THE COURT:** Not at all; that's okay. Two weeks is  
8 fine. I know you're traveling quite a bit and it's tough, but  
9 I know Ms. Hildenbrand does a great job in her briefs and what  
10 not --

11 **MR. DEPASQUALE:** Indeed, your Honor.

12 **THE COURT:** -- so I assume she'll be carrying some of  
13 the water, doing some of the heavy lifting on this. But two  
14 weeks is fine.

15 **MR. DEPASQUALE:** Thank you for your indulgence.

16 **THE COURT:** Mr. Connop.

17 **MR. CONNOP:** Yes, your Honor.

18 **THE COURT:** We could -- I don't know, I was  
19 originally thinking just giving you the same time for you to  
20 give your memorandum a blow out rather than a back and forth.  
21 I think I'm going to do that. I'm going to give you two weeks.  
22 You give me your best shot, and then I'll figure out the two  
23 arguments.

24 I pretty much have an idea. I think I see where they  
25 are. I don't know if we really need to further delay the

1 process by giving you extra time after the initial two weeks  
2 for you to respond, but -- Very good. I'll do that, and I'll  
3 give you, let's see, today is February 28<sup>th</sup>. Two weeks is  
4 normally March 14<sup>th</sup>, but I think it's March 13<sup>th</sup> now, right? Is  
5 this a leap year? Yeah, this year it's March 13<sup>th</sup>.

6 How about March 14<sup>th</sup>, okay? We'll give you -- Let's  
7 do this, let's do this. Let's make it March -- I'll make it  
8 March 17<sup>th</sup>, even though that way -- you can always file them  
9 early if you have other plans for March 17<sup>th</sup>, okay?

10 **MR. CONNOP:** Both briefs --

11 **THE COURT:** Very good.

12 **MR. CONNOP:** I'm sorry, your Honor; both briefs are  
13 due on that day?

14 **THE COURT:** Yes.

15 **MR. CONNOP:** Okay.

16 **THE COURT:** Both briefs will be due on March 17<sup>th</sup> on  
17 that limited issue. And I'm going to limit it to five pages,  
18 okay. You don't have to do a lot of historical stuff and  
19 background information; we have all that. Let's focus on that  
20 one issue, okay? And we can read the cases, so a whole lot of  
21 commentary isn't necessary, you know, unless the cases really  
22 don't stand for what you say they stand for, and then I guess  
23 you've got to do a little more commentary.

24 But in any event, short, sweet, to the point. We'd  
25 appreciate that, okay?



1 All right, thank you, folks; appreciate it. And  
2 thank you very much for adjusting your schedules to fit mine.  
3 I know there was a belief that I might be there in person today  
4 because Pitt played last night in Pittsburgh and I tend to make  
5 those games, but unfortunately I had briefs and things to read  
6 in anticipation, so I could only watch it on T.V.

7 So anyhow, thank you very much and I appreciate your  
8 input, and we'll get a decision out as soon as we have your  
9 briefs. Thank you.

10 MR. CONNOP: Thank you, your Honor.

11 MR. DEPASQUALE: Thank you, your Honor.

12 THE CLERK: All rise.

13 (This proceeding was concluded at 11:01 a.m.)  
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



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Signed

March 10, 2008

Dated

*TONI HUDSON, TRANSCRIBER*